

No. 10334

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United States

Vol  
2330

# Circuit Court of Appeals

For the Ninth Circuit./

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SAM SCHNITZER, HARRY J. WOLF, ROSE SCHNITZER  
and JENNIE WOLF, individually, and as a co-partnership  
doing business under the name and style of Alaska Junk  
Company,

Appellants,

vs.

CALIFORNIA CORRUGATED CULVERT COMPANY, a  
corporation, and LEO T. CROWLEY, Alien Property  
Custodian of the United States,

Appellees.

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## Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 381

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Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

JUN 10 1943

Rotary Colorprint, 590 Folsom St., San Francisco

PAUL P. O'BRIEN,  
CLERK



No. 10334

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Designation of Appellants of Parts of Record to be Printed (CCA) .....	376
Stipulation re .....	375
Answer .....	8
Appeal:	
Bond on .....	84
Certificate of Clerk to Transcript of Record on .....	93
Designation of Appellants of Content of Record on (DC) .....	90
Designation of Parts of the Record to be Printed, Appellants Amended (CCA)..	376
Motion for Extension of time to file Record on .....	86
Notice of .....	82
Order Directing Transmittal of Original Exhibits on .....	92
Order Extending time to file Record on..	87
Statement of Points, Appellants (DC)....	88
Statement of Points, Appellants (CCA)..	372
Stipulation re Amended Designation of Record on .....	375

Index	Page
Bond on Appeal .....	84
Certificate of Clerk to Transcript of Record on Appeal .....	93
Complaint .....	2
Decree, Interlocutory .....	78
Designation of Appellants of Contents of Rec- ord on Appeal (DC) .....	90
Designation of Parts of the Record to be Printed, Appellants Amended (CCA).....	376
Stipulation re .....	375
Exceptions by Defendants to Proposed Find- ings and Conclusions of Law.....	63
Findings of Fact and Conclusions of Law....	66
Interlocutory Decree .....	78
Motion and Notice of Motion to add Party Plaintiff .....	18
Affidavit of William S. Graham in Sup- port of .....	25
Supplement to Complaint .....	21
Vesting Order of the Alien Property Cus- todian, Exhibit "G" .....	23
Motion for Extension of time to file Record on Appeal .....	86
Names and Addresses of Attorneys of Record	1
Notice of Appeal .....	82

Index	Page
Opinion .....	61
Order based on Stipulation to Permit Defendants to Incorporate Additional Patents in their Answer .....	16
Order Directing Transmittal of Original Exhibits .....	92
Order Extending time to file Record on Appeal	87
Order Substituting Leo. T. Crowley as Party Plaintiff .....	27
Order Upon Pre-Trial .....	29
Statement of Points on Appeal, Appellants' (DC) .....	88
Statement of Points on Appeal, Appellants' (CCA) .....	372
Stipulation and Order Regarding Reproduction of Exhibits .....	443
Stipulation re Amended Designation of Record on Appeal .....	375
Stipulation relative to Pre-Trial Exhibits ....	28
Stipulation to Permit Defendants to Incorporate Additional Patents in their Answer....	14
Transcript of Proceedings on Trial of Cause..	95
Certificate of Reporter .....	370
Exhibits for Defendants:	
25—Copy of Patent No. 222,195, dated Dec. 2, 1879, to Theodore J. McGowan, Cincinnati, Ohio .....	391
Admitted in Evidence .....	334

Index	Page
Exhibits for Defendants—(Continued):	
27—Copy of Patent 999,169, dated July 25, 1911, to Theodore N. Jones, Boulder, Colorado.....	395
Admitted in Evidence .....	195
29—Photostatic copy of Patent 685,- 818, dated Nov. 5, 1901, to R. M. Close, Los Angeles, California...	401
Admitted in Evidence .....	334
32—Photostatic copy of Patent 580,- 084, dated Apr. 6, 1897, to H. H. Gorter, San Francisco, Califor- nia .....	407
Admitted in Evidence .....	185
36—Copy of Patent 1,255,577, dated Feb. 5, 1918, to Edward Francis Berry, New Orleans, La.....	413
Admitted in Evidence .....	189
37—Photostatic copy of Patent 1,448,- 646, dated Mar. 13, 1923, to J. F. Ward, Dunsmuir, Calif. ....	423
Admitted in Evidence .....	335
39—Copy of Patent 1,292,524, dated Jan. 28, 1919, to Lemuel W. Ser- rel, Plainfield, New Jersey.....	429
Admitted in Evidence.....	192
40—Copy of Patent 811,812, dated Feb. 6, 1906, to Edward V. Ander- son, Pittsburg, Pa. ....	433
Admitted in Evidence.....	188

Index	Page
Exhibits for Plaintiffs:	
11—Copy of Patent 1,747,942, dated Feb. 18, 1930, to Karl Lanninger, Frankfort-on-the-Main, Germany. . . . .	383
Admitted in Evidence . . . . .	99
22—Copy of Patent 1,945,293, dated Jan. 30, 1934, to Ralph H. Pierce, Eugene, Oregon . . . . .	387
Admitted in Evidence . . . . .	295
Witnesses for Defendants:	
Finkbeiner, E. A.	
—direct . . . . .	255
—cross . . . . .	258
—redirect . . . . .	290
McDougall, George F.	
—direct . . . . .	172, 215
—recalled, direct . . . . .	290, 350
—cross . . . . .	291
Pierce, Ralph H.	
—direct . . . . .	340
—cross . . . . .	342
Witnesses for Plaintiffs:	
Hanson, Launcelot W.	
—rebuttal, direct . . . . .	351
—cross . . . . .	364
Vale, Baldwin	
—direct . . . . .	102, 130
—cross . . . . .	136, 159
—redirect . . . . .	168



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L. R. GEISLER,

Platt Building, Portland, Oregon, and

WILLIAM S. GRAHAM,

111 Sutter Street, San Francisco, California,

For Appellee, California Corrugated Cul-  
vert Co.

CARL C. DONAUGH,

United States Attorney, and

JAMES H. HAZLETT,

Assistant United States Attorney,

For Alien Property Custodian, Portland,  
Oregon.



In the District Court of the United States for the  
District of Oregon, March Term, 1941.

Be It Remembered, That on the 3rd day of April,  
1941, there was duly filed in the District Court of  
the United States for the District of Oregon, a Com-  
plaint, in words and figures as follows, to wit: [1\*]

In the United States District Court for the  
District of Oregon

Civil No. 706

CALIFORNIA CORRUGATED CULVERT CO.,  
a corporation, and KARL LANNINGER,  
Plaintiffs,

vs.

SAM SCHNITZER, HARRY J. WOLF, ROSE  
SCHNITZER, and JENNIE WOLF, individ-  
ually, and as a co-partnership doing business  
under the name and style of ALASKA JUNK  
CO.,

Defendants.

BILL OF COMPLAINT FOR INFRINGEMENT  
OF LETTERS PATENT

To the Honorable,

The Judges of the Above-Entitled Court:—

The Plaintiffs above-named, California Corru-

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\* Page numbering appearing at foot of page of original certified  
Transcript of Record.



gated Culvert Co., and Karl Lanninger, sometimes known as Karl L. Lanninger, bring this, their Bill of Complaint, against Defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, as individuals, and as co-partners doing business under the name and style of Alaska Junk Co., and for cause of action allege and say:— [2]

### I.

That the Plaintiff, California Corrugated Culvert Co., is a corporation organized and existing under the laws of the State of California and is a resident of said State and has its principal established place of business in the City of Berkeley, County of Alameda, State of California; that the Plaintiff, Karl Lanninger, is a citizen or subject of Germany and a resident of Frankfort-on-Main in Germany.

### II.

That upon information and belief the Defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, are citizens of the State of Oregon and are residents of the City of Portland, County of Multnomah in said State of Oregon, and are co-partners doing business under the name and style of Alaska Junk Co., with an established place of business in the City of Portland, County of Multnomah, State of Oregon

### III.

That the grounds upon which the jurisdiction of this Court depends in this suit is that this is a suit

in equity which arises under the laws of the United States relating to Letters Patent for invention; that the Defendants have their respective places of residence within the judicial district of this Court, and also have an established place of business and have committed acts of infringement in said judicial district.

#### IV.

That on February 18, 1930, United States Letters Patent for invention, No. 1,747,942, were, in compliance with law, duly and regularly issued to the plaintiff, Karl Lanninger, for an improvement in Pipe Line, of which he was the first inventor; that said Letters Patent were granted on an application filed by said Lanninger in the United States Patent Office on October 8, 1923, Serial No. 667,353, based on an application having [3] previously been filed in Germany on October 14, 1922; that subsequent to the issuance of said Letters Patent, and prior to the commencement of this suit, said Karl Lanninger, using his name, including his middle initial, as Karl L. Lanninger, by an instrument in writing dated the 14th day of April, 1937, granted to the Plaintiff, California Corrugated Culvert Co., an exclusive license to manufacture, sell and use the said patented invention in and throughout the United States of America and its possessions for irrigation or water-carrying purposes, and including the right to sub-license others, which said license, at all times since said 14th day of April, 1937, has been and now is in full force and effect; and Plaintiff, California Corrugated Culvert Co., has been and

now is the owner of all rights thereunder, save and except for non-exclusive territorial sub-licenses granted by it to others; and save and except said license to California Corrugated Culvert Co., the Plaintiff, Karl L. Lanninger, has been and now is the owner of all right, title and interest in and to said invention and said Letters Patent therefor, No. 1,747,942, throughout the United States of America and the territories thereof. Profert is hereby made of said United States Letters Patent, the original or a certified copy thereof being ready in Court to be produced as the Court may direct, and an uncertified printed copy thereof being hereto annexed as Exhibit "A", and to which reference is hereby made and by such reference being incorporated herein as though set forth in full and at length.

#### V.

That the Plaintiff, California Corrugated Culvert Co., and its sub-licensees, have manufactured and sold devices in accordance with said Letters Patent and the same have met with great commercial success; that Plaintiff, California Corrugated Culvert Co., has, prior to the commencement of this suit, given written notice to the Defendants herein of said Letters Patent and of the claim of infringement thereof. [4]

#### VI.

Upon information and belief Plaintiffs allege that within the six years last past, within the judicial district of this Court, since the granting of said Letters Patent, and prior to commencement

of this suit, and since the granting of the aforesaid license to the Plaintiff, California Corrugated Culvert Co., and without the license or consent of Plaintiffs, or either of them, the Defendants, jointly and severally, have manufactured and sold pipe joints embodying the invention illustrated, described and claimed in the aforesaid United States Letters Patent, and have thereby infringed and are now continuing to infringe upon the rights of Plaintiffs in, to and under said Letters Patent, and particularly Claim 3 thereof; and Plaintiffs are informed and believe and thereupon allege that Defendants threaten to continue and will continue to so infringe said Letters Patent unless enjoined by this Court.

## VII.

That by reason of such infringement as aforesaid, Defendants have wrongfully gained profits which rightfully belong to Plaintiffs, and Plaintiffs have suffered damages, the exact amount of which profits or damages is unknown to Plaintiffs and can be ascertained only by an accounting.

## VIII.

That for the wrongful acts of Defendants and a continuance thereof, Plaintiffs have no plain, adequate and complete remedy at law.

Wherefore, Plaintiffs pray for a Decree of this Court adjudging said Letters Patent in suit, No. 1,747,942, to be good and valid in law and to have been infringed by Defendants and each of them; that Plaintiffs have against Defendants, and each



of them, an Order for writ of preliminary injunction pendente lite and a permanent and perpetual injunction upon final hearing, against further infringement by Defendants, and each of them, and all [5] those in active concert and participation with them or either of them, and an accounting for profits wrongfully acquired by Defendants and the damages sustained by Plaintiffs, by means of such infringement, and that the award of said damages be trebled by reason of the wilful nature of the infringement; and that an assessment of costs of suit be made against Defendants and in favor of Plaintiffs, and for such further relief as may be equitable.

CALIFORNIA CORRUGATED  
CULVERT CO.

KARL LANNINGER

By WM. S. GRAHAM

their Attorney

THEODORE J. GEISLER

302 Platt Building

Portland, Oregon

Attorney for Plaintiffs

WILLIAM S. GRAHAM

111 Sutter Street

San Francisco, California

Of Counsel for Plaintiffs

[Note: For Exhibit "A" to Complaint, see  
Trial Exhibit No. 11.]

[Endorsed]: Filed April 3, 1941. [6]

And Afterwards, to wit, on the 23rd day of April, 1941, there was duly Filed in said Court, an Answer, in words and figures as follows, to wit: [10]

[Title of District Court and Cause.]

## ANSWER

The Defendants, for answer to the complaint of the Plaintiffs:

### I.

Admit the allegations in Paragraph I of the complaint as to the corporate identity and residence and place of business of the Plaintiff, California Corrugated Culvert Co.; but allege that they are without knowledge as to the citizenship or residence of the Plaintiff, Karl Lanninger, and therefore leave the Plaintiffs to proof as to the allegations in said paragraph contained concerning Karl Lanninger.

### II.

Admit the allegations of Paragraph II of the complaint.

### III.

Admit the allegations of Paragraph III of the complaint, excepting that the Defendants deny that they, or any of them, have committed any acts of infringement in the judicial district therein mentioned or elsewhere.

### IV.

Admit that on February 18th, 1930, United States Letters Patent for Invention numbered 1,747,942 issued to the Plaintiff, Karl Lanninger, pursuant

to an application filed by said Karl Lanninger in the United States Patent Office on October 8th, 1923, Serial number 667,353; but deny that such Letters Patent issued in compliance with [11] law or duly or regularly issued; that the Plaintiff, Karl Lanninger, was the first inventor of the devices described in said Letters Patent, or any thereof. As to all remaining allegations in said paragraph contained, Defendants allege that they are without knowledge as to the truth or falsity thereof, and therefore deny the same.

#### V.

Allege that they are without knowledge as to the truth or falsity of the matters alleged in Paragraph V of the complaint, and therefore deny the same, excepting only that they admit that, prior to the commencement of this suit, Plaintiff, California Corrugated Culvert Co., has given written notice to the Defendants herein of the Letters Patent in said paragraph mentioned and of claim of infringement thereof.

#### VI.

Deny each and every allegation in Paragraph VI of the complaint contained.

#### VII.

Deny each and every allegation in Paragraph VII of the complaint contained, and specifically allege that they have gained no profits of any degree or nature rightfully belonging to the Plaintiffs, and that Plaintiffs have suffered no damages

of any degree or nature by reason of the acts of the Defendants.

#### VIII.

Deny each and every allegation set out in Paragraph VIII of the complaint.

#### IX.

Further answering said bill of complaint, the Defendants allege that there is no real invention or novelty in the patent numbered 1,747,942, in suit, and that the alleged "pipe joint", set forth in the claims of the patent, and all thereof, is not the statutory subject of invention and is not any new or useful art within the statutes in such case made and provided, and the said alleged method [12] or improvement or system or art is not patentable subject matter under said statutes.

#### X.

Further answering the complaint of the Plaintiffs, the Defendants allege that the said Letters Patent numbered 1,747,942, discloses no patentable invention over and in view of the state of the art at and prior to the time application for said patent was filed and as illustrated in the instances thereof referred to in Paragraph XI of this answer. The claims of the said patent numbered 1,747,942 purport to cover and cover a mere aggregation of elements; and Defendants assert that the state of the art before and at the time of the alleged invention and/or application for Letters Patent therefor was such that, to be valid, the



claims of said patent must be so narrowly construed as to be incapable of being validly applied to pipe joint construction. Defendants allege that, in view of the knowledge and practice of the art at and prior to the date of filing of the application for Letters Patent in the United States Patent Office upon the patent in suit, it required no invention whatsoever, but only the ordinary skill of the art to which said alleged invention of Letters Patent of the United States, numbered 1,747,942, appertains to make the same; and the said Letters Patent is consequently invalid and void.

## XI.

Further answering the complaint of the Plaintiffs, the Defendants allege that the said Letters Patent in suit, numbered 1,747,942, is wholly void because the alleged inventions set forth in the claims of the patent, and each and all thereof, and every material and substantial part thereof, therein claimed as new, were invented by others prior to the alleged invention thereof by the Plaintiff, Karl Lanninger, and were shown and described in printed publications in the United States before the alleged invention by the patentee and for more than two years prior to the filing of the [13] application for patent on which said patent issued as follows:

## UNITED STATES PATENTS

Number	Patentee	Date	
1,363,565	G. Christenson	December	28, 1920
222,195	T. J. McGowan	December	2, 1879
948,312	R. M. Dixon	February	8, 1910
999,169	T. N. Jones	July	25, 1911
557,296	R. Wigan	March	31, 1896
685,818	R. M. Close	November	1, 1901
1,009,303	C. C. Hansen	November	21, 1911
631,661	E. L. Perry, Jr.	August	22, 1899
580,084	H. H. Gorter	April	6, 1897
1,202,506	R. Galloway	October	24, 1916
628,018	J. Muskett	July	4, 1899

and others of which Defendants are not at present advised, but beg leave to add thereto by proper amendment of this, their answer, together with details thereof when such information is obtained.

## XII.

Further answering the complaint of the Plaintiffs, the Defendants allege that, in view of the function, structure and purpose of the alleged invention, as illustrated, described and set out in the [14] Letters Patent in suit, these Plaintiffs cannot seek for nor obtain a construction of the claims of said patent, or any of them, sufficiently broad to cover or include within the purview thereof the construction employed by these Defendants, which is as set out in Paragraph XV of this answer.

## XIII.

Further answering the complaint of the Plaintiffs, the Defendants allege that, by reason of the proceedings had or taken in the United States

Patent Office in the prosecution of the application for Letters Patent of the United States, in suit, numbered 1,747,942, the patentee therein named, his legal representatives and assigns, are estopped from maintaining the same in such scope as to cover or embrace any apparatus which the Defendants may have made, used or sold or which they are now making, using or selling.

#### XIV.

Further answering the complaint of the Plaintiffs, the Defendants allege that the aforesaid Letters Patent, in suit, numbered 1,747,942, was issued by the United States Patent Office without due investigation and that an important part of the relevant prior art, hereinbefore set forth, was overlooked and other parts of said prior art were improperly applied and construed, by reason whereof the Commissioner of Patents exceeded his legal authority in granting the aforesaid Letters Patent, and the said patent is therefore void and of no effect.

#### XV.

The construction made, used and/or sold by the Defendants herein and which the Defendants have been informed and believe is the subject matter of the Plaintiffs' complaint in this suit, consists of pipe couplers manufactured, used and/or sold under the claims of United States Letters Patent numbered 1,945,293, dated January 30th, 1934, issued to R. H. Pierce, as patentee, with various forms of locks used in connection therewith for

the purpose of holding [15] together the ends of two pipes connected by such couplers.

Wherefore, Defendants allege that Plaintiffs are entitled to no relief prayed for in the bill of complaint herein or to any relief, and pray to be hence dismissed with their costs in this cause sustained, and for such other and further relief as to the Court may seem just.

J. S. MIDDLETON

Attorney for Defendants

[Endorsed]: Filed April 23, 1941. [16]

---

And Afterwards, to wit, on the 14th day of July, 1941, there was duly Filed in said Court, a Stipulation to permit defendants to incorporate additional patents in their answer, in words and figures as follows, to wit: [17]

[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective counsel of record, William S. Graham and Theodore J. Geisler, for the Plaintiffs, and J. S. Middleton, for the Defendants, as follows:

(1) The Defendants may incorporate in Paragraph XI of their answer herein, additionally to the patents therein cited, the following patents:



## UNITED STATES PATENTS

Number	Patentee	Date	
1,619,439	W. T. Skillern	March	1, 1927
1,255,577	E. F. Berry	February	5, 1918
1,448,646	J. F. Ward	March	13, 1923
1,117,961	J. H. Phillips, Jr.	November	17, 1914
1,292,524	L. W. Serrell	January	28, 1919
811,812	E. V. Anderson	February	6, 1906
1,274,406	J. W. Frazier	August	6, 1918
1,130,726	L. W. Greve	March	9, 1915

and by order of the above entitled Court approving this stipulation, the answer may be taken and deemed to be so amended.

(2) That notice of the defenses pleaded in the answer herein and particularly, notice of the patents cited as prior art in Paragraphs X and XI of said answer (as amplified by the terms of this stipulation) need not be given by the defendants otherwise than by the terms of said answer as amplified by the terms of this [18] stipulation and the order to be entered hereon.

(3) That upon trial of this cause and upon the taking of any depositions preceding trial, either or both of the parties hereto may introduce in evidence, where admissible, plain printed copies of patents furnished by the United States Patent Office, without certification thereof, and that the dates of application shown by said copies shall be taken and deemed as the correct dates of filing of the applications therefor in the United States Patent Office.

Dated this 16th day of May, 1941.

T. J. GEISLER

Of Counsel for Plaintiffs

WM. S. GRAHAM

Of Counsel for Plaintiffs

J. S. MIDDLETON,

Counsel for Defendants.

[Endorsed]: Filed July 14, 1941. [19]

---

And Afterwards, to wit, on Monday, the 14th day of July, 1941, the same being the 7th Judicial day of the Regular July, 1941, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [20]

[Title of District Court and Cause.]

### ORDER BASED ON STIPULATION

Based upon the stipulation of the parties hereto, the original whereof was filed with the Clerk of this Court at the time of commencement of pretrial of this cause on July 14th, 1941, and which original stipulation in writing was, at the time of such pretrial, broadened by oral stipulation of the parties hereto made in open court, to add to the last of patents therein cited, the following

#### UNITED STATES PATENTS

Number	Patentee	Date	
965,998	T. Evans	August	2, 1910
543,871	L. J. Houze	August	6, 1895

it is at this time

Ordered:

(1) The Defendants may incorporate in Paragraph XI of their answer herein, additionally to the patents therein cited, the following patents:

UNITED STATES PATENTS

Number	Patentee	Date	
1,619,439	W. T. Skillern	March	1, 1927
1,255,577	E. F. Berry	February	5, 1918
1,448,646	J. F. Ward	March	13, 1923
1,117,961	J. H. Phillips, Jr.	November	17, 1914
1,292,524	L. W. Serrell	January	28, 1919

[21]

811,812	E. V. Anderson	February	6, 1906
1,274,406	J. W. Frazier	August	6, 1918
1,130,726	L. W. Greve	March	9, 1915
965,998	T. Evans	August	2, 1910
543,871	L. J. Houze	August	6, 1895

and that such answer be and the same is hereby deemed and taken to be so amended without need for clerical entry therein of the patents above cited.

(2) That notice of the defenses pleaded in the answer of the Defendants, and particularly notice of the patents cited as prior art in Paragraphs X and XI of said answer (as amplified by the terms of this order) need not be given by the Defendants otherwise than by the terms of said answer as amplified by the terms of this order.

(3) That upon trial of this cause, either or both of the parties hereto may introduce in evidence where admissible, plain printed copies of patents furnished by the United States Patent Office without certification thereof, and that the

dates of application shown by said copies shall be taken and deemed as the correct dates of filing of the applications therefor in the United States Patent Office; and that any such plain printed copies of patents introduced in evidence by either of the parties hereto, upon depositions herein and prior to the entry of this order, shall likewise be received in evidence herein without certification.

Dated this 14th day of July, 1941.

JAMES ALGER FEE

Judge

[Endorsed]: Filed July 14, 1941. [22]

---

And Afterwards, to wit, on the 7th day of August, 1942, there was duly Filed in said Court, a Notice and Motion to add party plaintiff and to file supplemental complaint with vesting order of Alien property Custodian and affidavit of William S. Graham, in words and figures as follows, to wit:

[35]

[Title of District Court and Cause.]

MOTION AND NOTICE OF MOTION TO ADD  
PARTY PLAINTIFF AND FILE SUPPLE-  
MENT TO COMPLAINT.

To defendants above named and to J. S. Middleton, Esq., their attorney:

Please take notice that on Monday, the tenth day of August, 1942, at the hour of 10 o'clock A. M., or as soon thereafter as counsel may be heard, in



the courtroom of the above entitled Court, the plaintiffs will move the Court for an Order:—

1. granting plaintiffs leave to add as a party plaintiff in the above entitled cause, Leo T. Crowley, Alien Property Custodian of the United States.

2. granting leave to plaintiffs to file herein a Supplemental Complaint, copy of which is annexed hereto.

The grounds of this motion are that: [36]

(a) that at the time of commencement of this action, to-wit, on or about the 2nd day of April, 1941, and at all times hereafter up to and including the 17th day of June, 1942, the plaintiff Karl Lanninger was owner of the legal title and of all right, title and interest in the Letters Patent here in suit No. 1,747,942, except the license rights of plaintiff, California Corrugated Culvert Co., as set forth in paragraph IV of the Complaint herein; that subsequent to the commencement of this suit, to-wit, on the 18th day of June, 1942, the United States Alien Property Custodian, Leo T. Crowley, by Vesting Order Number 27, (copy of which is annexed hereto), directed that all right, title and interest in the said Letters Patent, and all accrued royalties and recoverable damages and profits, shall be and the same thereby were vested in the Alien Property Custodian of the United States; and that said Leo T. Crowley, United States Alien Property Custodian has been, ever since said 18th day of June, 1942, and now is, the owner of the legal title to said Letters Patent in suit, and all rights and interest therein and thereunder, save and ex-

cept the aforesaid license rights of the plaintiff, California Corrugated Culvert Co.; (b) that plaintiff, California Corrugated Culvert Co. and its attorneys were not aware of said Vesting Order Number 27, until the 31st day of July, 1942, when the same came to the attention of the attorney for the plaintiffs, William S. Graham, in a casual manner when said attorney inquired at the San Francisco Office of the Alien Property Custodian as to whether it would be necessary for him to secure a personal permit to represent an alien enemy in the trial of this cause.

That the Alien Property Custodian has consented to be made a party co-plaintiff.

In support of this motion, plaintiffs will read from and rely on the papers on file in this cause, the annexed affidavit of William S. Graham, Federal Rules of Civil Procedure 15 and 21, [37] copy of the Vesting Order number 27 referred to above, and the proposed Supplement to Complaint, copy of which is attached hereto.

THEODORE J. GEISLER

WM. S. GRAHAM

Attorneys for Plaintiffs

Received the copy of the foregoing motion and notice, including proposed Supplement to Complaint and Vesting Order number 27 of the Alien Property Custodian dated June 18, 1942, this 5th day of August, 1942.

J. S. MIDDLETON

Attorney for Defendants

[Title of District Court and Cause.]

## SUPPLEMENT TO COMPLAINT

To the Honorable, the Judges of the above entitled Court:—

Come now the plaintiffs and by leave of Court file this Supplement to the Complaint heretofore filed in this action, and thereupon supplementally allege:

### I.

That this is a civil action for an injunction and an accounting for infringement of United States Letters Patent No. 1,747,942, granted February 18, 1930, to Karl Lanninger for improvements in Pipe Line.

### II.

That in the original complaint filed herein on or about April 2, 1941 the plaintiffs appear as California Corrugated [39] Culvert Co., a corporation, and Karl Lanninger.

### III.

That the plaintiff, Leo T. Crowley, Alien Property Custodian, added as a co-plaintiff by this Supplement to the Complaint, is the duly appointed Alien Property Custodian of the United States, and, as such, duly and lawfully issued the Vesting Order number 27, herein after referred to.

### IV.

That at the time of filing Complaint herein, and at all times up to and including June 17, 1942,

the plaintiff, Karl Lanninger, owned all title and interest in, to and under said United State Letters Patent number 1,747,942, save and except for that certain license alleged by Paragraph IV of said Complaint to have been granted to and owned by plaintiff, California Corrugated Culvert Co.

V.

That subsequent to the commencement of this action, to-wit, on the 18th day of June, 1942, Leo T. Crowley, Alien Property Custodian of the United States, issued pursuant to law a Vesting Order number 27, entitled "Vesting of Certain Patents," whereby said Alien Property Custodian directed that all rights, title and interest, in and to said United States Letters Patent here in suit No. 1,747,942, to Karl Lanninger, shall be and the same thereby were vested in the Alien Property Custodian of the United States, including all accrued royalties, and all damages and profits recoverable for past infringement thereof; and at all times since said 18th day of June, 1942, said Alien Property Custodian has been and now is owner of all right, title and interest in, to and under said Letters Patent, save and except the aforesaid license owned by plaintiff, California Corrugated Culvert Co.

THEO. J. GEISLER

WM. S. GRAHAM

Attorneys for Plaintiffs [40]



Title 8—Aliens and Nationality

Chapter II—Office of Alien Property Custodian

Part 502—Vesting Orders—Vesting Order No. 27

Vesting of Certain Patents

§ 502.27 Under the authority of Section 5 (b) of the Trading with the Enemy Act of October 6, 1917 (50 U. S. C. A. App. § 5 (b) ), as amended by Sec. 301 of the First War Powers Act, 1941 (Pub. L. No. 354, 77th Cong., 1st Sess. (Dec. 18, 1941) § 301), and pursuant to Executive Order No. 9095 of March 11, 1942, the undersigned, finding upon investigation that the property hereinafter described is the property of Nationals of a Foreign Country designated in Executive Order 8389, as amended, as defined therein, and that the action herein taken is in the public interest, hereby directs that such property shall be and the same hereby is vested in the Alien Property Custodian to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States; such property being described as follows:

All right, title and interest, including all accrued royalties and all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof, in the patents, the numbers of which are listed in Exhibits A, B, C, D, E, F, and G attached hereto and made a part hereof, and the titles to which stand of record

in the United States Patent Office in the names of the persons appearing (a) in the case of the aforesaid Exhibits A, B, C, D, E, and F, at the respective tops thereof, and (b) in the case of said Exhibit G, opposite the respective numbers listed therein.

Such property and any and all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, claiming any interest in any or all of such property and/or any person asserting any claim as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1 within one year from the date of this order, or within such further time as may be allowed by the Alien Property Custodian.

Executed at Washington, D. C., on June 18, 1942.

(Signed) LEO T. CROWLEY

Alien Property Custodian

(F. R. Doc. 42-5812; Filed, June 22, 1942; 10:48 a.m.)

(7 F. R. 4629 (Number 122, June 23, 1942.)) [41]

## EXHIBIT G

Patents the title to which stand of record in the United States Patent Office in the names of the persons appearing opposite the numbers thereof, respectively, as follows:

	Number	Name
Reissue	1,747,942	Karl Lanninger
(and 40 others on Page 1) [42]		

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AFFIDAVIT OF WILLIAM S. GRAHAM IN  
SUPPORT OF MOTION TO ADD PARTY  
PLAINTIFF

State of California,  
City and County of San Francisco—ss.

William S. Graham, being first duly sworn, deposes and says that he is one of the attorneys of record for plaintiffs; that affiant is informed and believes that the plaintiff Karl Lanninger is a German National and resides in Germany; that at the time of commencement of this suit, the legal title to Letters Patent in suit No. 1,747,942 was owned by said Karl Lanninger; that said ownership by said Lanninger continued up to and including the 17th day of June, 1942; that subsequent to the commencement of this suit, to-wit, on the 18th day of June, 1942, the Alien Property Custodian of the United States took over all right, title and interest in and to said Letters Patent No. 1,747,942, by Vesting Order number 27, and at all times since said 18th day of June, 1942, said Alien Property Custodian has been and now is the owner of all right,

title and interest in, to and under said Letters Patent, save and except the license rights owned by plaintiff California Corrugated Culvert Co.; that neither affiant nor the plaintiff, California Corrugated Culvert Co. was aware of the Vesting Order number 27 of June 18, 1942, until the 31st day of July, 1942, when the matter casually came to the attention of affiant in connection with an inquiry on another matter at the San Francisco office of the Alien Property Custodian; that affiant immediately and on the same day, to-wit, July 31, 1942, telegraphed to the Alien Property Custodian at Washington, D. C., requesting authority to add said Alien Property Custodian in the place and stead of said Karl Lanninger, as owner of the legal title to said Letters Patent in suit, and on August 1st, 1942, the office of said Alien Property Custodian advised affiant by tele- [44] gram that the Alien Property Custodian consented to become a party co-plaintiff in this Action.

WILLIAM S. GRAHAM

Sworn to and subscribed before me this 5 day of Aug., 1942.

[Seal]

CAROLYNE CLEMENTS

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Nov. 20, 1943.

[Endorsed]: Filed August 7, 1942. [45]

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And Afterwards, to wit, on Monday, the 10th day of August, 1942, the same being the 31st Judicial



day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [46]

[Title of District Court and Cause.]

ORDER SUBSTITUTING LEO T. CROWLEY  
AS PARTY PLAINTIFF

It appearing to the court that the plaintiff Karl Lanninger, the owner of the legal title to the patent in suit subject to the exclusive license therein held by the party plaintiff California Corrugated Culvert Co., is an alien residing in Germany, and the U. S. Custodian of alien property, Leo T. Crowley, having lawfully taken possession of all the property rights and interest of the patent in suit, and the said custodian having appeared in this suit by the U. S. Attorney for Oregon and a motion having been made to substitute the said custodian of alien property in place of the plaintiff Karl Lanninger and such motion having been argued by counsel, in consideration thereof it is

Ordered that the said Leo T. Crowley, U. S. Custodian of alien property, be and he hereby is made a party plaintiff in the place and stead of the said Karl Lanninger in all further proceedings in this suit.

LEON R. YANKWICH

U. S. District Judge

Dated August 10th, 1942.

[Endorsed]: Filed August 10, 1942. [47]

And Afterwards, to wit, on the 19th day of August, 1942, there was duly Filed in said Court, a Stipulation relative to pre-trial Exhibits, in words and figures as follows, to wit: [48]

[Title of District Court and Cause.]

#### STIPULATION RE PRE-TRIAL EXHIBITS

It Is Stipulated and Agreed by and between the Plaintiffs, by William S. Graham, of their counsel, and the Defendants, by J. S. Middleton, their counsel, as follows:

1. Upon trial of this cause, plain printed copies of patents, without certification, may be offered as exhibits by both parties, subject to the rules of evidence, with the same force and effect as originals or certified copies, and that the dates of filing of applications, as shown by such copies, shall be taken as the dates of filing of the applications in the United States Patent Office.

2. As to pretrial Exhibits 13 and 14, copies may be admitted with the same force and effect as originals.

3. As to models of couplings, offered as physical exhibits, that the tubular members have additional pipe lengths connected thereto in use, except pre-trial Exhibit 53.

4. That pretrial Exhibit 56 is a catalogue to the trade of R. H. Pierce Manufacturing Co., of Eugene, Oregon, which business is conducted by R. H. Pierce, who is the same person as the R. H. Pierce

mentioned as manufacturer of the tubular coupler members of pretrial Exhibits 3, 8, 47 and 48.

WM. S. GRAHAM

Of Attorneys for Plaintiffs

J. S. MIDDLETON

Attorney for Defendants

[Endorsed]: Filed August 19, 1942. [49]

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And Afterwards, to wit, on Wednesday, the 19th day of August, 1942, the same being the 39th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [50]

[Title of District Court and Cause.]

#### ORDER UPON PRETRIAL

This matter came regularly on for hearing before the Court, the Honorable James Alger Fee presiding, on July 14, 1941, upon pretrial, the Plaintiffs appearing by Launcelot W. Hanson, of the Plaintiff, California Corrugated Culvert Co., and by Theodore J. Geisler and William S. Graham, their attorneys, and the Defendants appearing by Harry J. Wolf, one of their number, and by J. S. Middleton, their attorney.

The hearing was for the purpose of conducting pretrial of the cause.

The parties, through counsel, presented to the Court a brief statement of the nature of the proceedings and a general outline of the facts involved, and thereupon proceeded to definition of the issues and to offer in evidence their respective pretrial exhibits; the pretrial procedure being at that time conducted from July 14, 1941, to July 16, 1941, inclusive. Thereupon, the pretrial hearing was adjourned for final completion immediately prior to actual trial, under the instruction of the Court.

Thereafter, and on August 15, 1942, pretrial procedure was resumed at an adjourned hearing thereof under the supervision of the [51] Honorable Leon R. Yankwich, but in the absence of the Court. The parties appeared, the Plaintiffs by Launcelot W. Hanson and by Theodore J. Geisler and L. R. Geisler, their attorneys, and the Defendants appeared by J. S. Middleton, their attorney.

The parties completed the offer in evidence of their respective pretrial exhibits not theretofore offered; and, pretrial procedure having been now completed, the Court, being now fully advised in the premises, finds and orders as follows:

1. This is a suit for an injunction and an accounting brought by the Plaintiffs herein and against the Defendants, based upon Claim 3 of United States Letters Patent numbered 1747942, entitled "Pipe Line," granted February 18, 1930, to Karl Lanninger, upon an application for such letters patent, filed in the United States Patent Office by the said Karl Lanninger on October 8, 1923, based upon an application previously filed in



Germany on October 14, 1922. The jurisdiction of this Court in this cause is founded upon laws of the United States relating to patents for inventions. Jurisdiction of the subject matter and of the parties is admitted.

2. The Plaintiffs charge the Defendants with infringement of said patent, and particularly Claim 3 thereof (the other claims not being charged as infringed), through the manufacture and sale within the District of Oregon and within the judicial district of this Court, within six years last past and since the granting of said letters patent and prior to the commencement of this suit and without the license or consent of the Plaintiffs, of devices embodying the characteristics of mechanical design and construction disclosed in said letters patent and claimed in Claim 3 of said United States Letters Patent numbered 1747942, above referred to.

3. The pipe joints, which are the subject matter of the Plaintiffs' claims of infringement, are those exemplified by pretrial Exhibits 47 and 48, and also by pretrial Exhibits 3 and 8.

4. The Defendants admit that, within the District of Oregon [52] and within the judicial district of this Court, and within six years last past and since the granting of the patent in suit and prior to the commencement of suit, they have sold devices of the kind exemplified by pretrial Exhibits 47 and 48 and 3 and 8, and that, as to devices sold by them having the characteristics of pretrial Exhibits 8 and 47, they have manufactured such devices to the extent of buying the tubular portions of the coupler



entities from Ralph H. Pierce, of Eugene, Oregon, the manufacturer thereof, and have themselves cut out the notch in the lip at the end of the tubular member of larger diameter and have welded on the hook or lock to the other tubular member; and that, as to devices having the characteristics of pretrial Exhibits 3 and 48, the Defendants have manufactured the same to the extent of buying the tubular portions of the coupler entities from Ralph H. Pierce, of Eugene, Oregon, the manufacturer thereof, and that they have purchased the latch-like locking means from the manufacturer thereof, R. L. Gheen, of Eugene, Oregon, and Defendants have themselves attached the said locking means to the body of the tubular portions of the couplings prior to sale by Defendants, with the understanding that in use and sale and "manufacture", as above defined, pipes and additional coupling members at the ends of pipes are installed at the ends of the models introduced as exhibits as here numbered.

5. The Defendants deny infringement through their proceedings as hereinbefore detailed.

6. The Defendants allege that the coupler entities responding to the characteristics of pretrial Exhibits 3, 8, 47 and 48 are manufactured and sold under and respond to the claims of United States Letters Patent numbered 1945293, for Pipe Joint, issued to Ralph H. Pierce, as patentee, under date of January 30, 1934, and with various forms of locks used in connection therewith for the purpose of holding together the ends of two pipes connected by such couplers; and Defendants contend that the

locking means attached to couplers responding to the characteristics of pretrial Exhibits 3 and 48 are manufactured and [53] sold under and respond to the claims of the United States Letters Patent numbered 2,253,232, issued August 19, 1941, to R. L. Gheen, of Eugene, Oregon, and that the locking means attached to couplers responding to the characteristics of pretrial Exhibits 8 and 47 are manufactured and sold under and respond to the claims of United States Letters Patent numbered 2,221,284, issued November 12, 1940, to W. R. Ames & Co., as assignee of R. A. Folsom. The Plaintiffs deny that the coupler entities and the locking means, exemplified by pretrial Exhibits 3, 8, 47 and 48, respond to the claims of the United States Letters Patent hereinbefore mentioned.

7. It is alleged by the Plaintiffs and admitted by the Defendants that the Plaintiff, California Corrugated Culvert Co., is a corporation organized and existing under and by virtue of the laws of the State of California; that the original Plaintiff, Karl Lanninger, is a citizen and subject of Germany and a resident of Frankfort-on-Maine in Germany; and that the Defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, are residents of Portland, in Multnomah County, Oregon, and are co-partners doing business under the name and style of Alaska Junk Co., with an established place of business in the City of Portland, Multnomah County, Oregon.

8. It is alleged by the Plaintiffs and admitted

by the Defendants that on February 18, 1930, United States Letters Patent numbered 1747942, issued to the original Plaintiff, Karl Lanninger, upon an application filed by the said Karl Lanninger in the United States Patent Office on October 8, 1923, serial number 667353; that the Plaintiff, California Corrugated Culvert Co., holds an exclusive license under such patent for irrigation purposes in and throughout the United States of America, to manufacture, sell and use the patented invention, the said admission by Defendant of validity of such license, however, being co-extensive only with the validity of the patent under which it is issued, such license being by virtue of an instrument dated August 14, 1937, a copy whereof is offered in evidence as pretrial [54] Exhibit 13; and it is further admitted by Defendants that the original Plaintiff, Karl Lanninger, was, until June 18, 1942, the owner of all right, title and interest in and to said invention and said letters patent therefor, numbered 1737942, throughout the United States of America and the territories thereof; that on June 18, 1942, Leo T. Crowley, Alien Property Custodian of the United States, did, by vesting order numbered 27, vest in the Alien Property Custodian of the United States, all right, title and interest of said Karl Lanninger in said letters patent, subject, however, to said successive titles being subject to said license of the Plaintiff, California Corrugated Culvert Co., and such admissions by Defendants being subject to determination of the validity of the

patent itself. Copy of such patent is offered in evidence as pretrial Exhibit 11.

9. Defendants allege that such Letters Patent numbered 1747942 never validly issued from the United States Patent Office, for the reasons:

(a) That the pipe joint set forth in the claims of the patent, and all thereof, is not the statutory subject of invention, and is not any new or useful article or combination within the statutes in such case made and provided, and the alleged article or combination is not patentable subject matter under such statutes;

(b) That the claims of said patent, and all thereof, purport to cover and cover a mere aggregation of elements;

(c) That, in view of the knowledge and practice of the art at and prior to the date of filing of the application for letters patent in the United States Patent Office for the patent in suit, it required no invention whatsoever but only the ordinary skill of the art to which said alleged invention appertains to make the same;

(d) That the alleged inventions set forth in the claims of the patent, and each thereof, and every material and substantial part thereof therein claimed as new, were invented by others prior to the alleged invention thereof by the Plaintiff, Karl Laninger, and were [55] shown and described in printed publications in the United States before the alleged invention by the patentee of the patent in suit and for more than two years prior to the filing of the application for patent in suit upon which



said patent in suit issued, said prior patents, publications and inventions having been duly and timely pleaded in Defendants' answer, as follows:

## UNITED STATES PATENTS

Number	Patentee	Date
1,363,565	G. Christenson	December 28, 1920
222,195	T. J. McGowan	December 2, 1879
948,312	R. M. Dixon	February 8, 1910
999,169	T. N. Jones	July 25, 1911
557,296	R. Wigan	March 31, 1896
685,818	R. M. Close	November 5, 1901
1,009,303	C. C. Hansen	November 21, 1911
631,661	E. L. Perry, Jr.	August 22, 1899
580,084	H. H. Gorter	April 6, 1897
1,202,506	R. Galloway	October 24, 1916
628,018	J. Muskett	July 4, 1899
1,619,439	W. T. Skillern	March 1, 1927
1,255,577	E. F. Berry	February 5, 1918
1,448,646	J. F. Ward	March 13, 1923
1,117,961	J. H. Phillips, Jr.	November 17, 1914
1,292,524	L. W. Serrell	January 28, 1919
811,812	E. V. Anderson	February 6, 1906
1,274,406	J. W. Frazier	August 6, 1918
1,130,726	L. W. Greve	March 9, 1915
965,998	T. Evans	August 2, 1910
543,871	L. J. Houze	August 6, 1895

(e) That the letters patent in suit were issued by the United States Patent Office without due investigation, and that an important part of the relevant prior art hereinbefore set forth was overlooked and other parts of said prior art were improperly applied and construed, by reason whereof the Commissioner of Patents exceeded his legal authority in granting the aforesaid letters patent.

(f) Defendants further allege that the state of the art before and at the time of the alleged inven-



tion and/or application for letters patent resulting in such patent was such that, to be valid, the claims of said patent must be so narrowly construed as to be incapable of being validly applied to pipe joint construction; and for the further reason that, in view of the function, structure and purpose of the alleged invention, as illustrated, described and set out in the letters [56] patent in suit, the Plaintiffs cannot seek for nor obtain a construction of the claims of said patent, or any of them, sufficiently broad to cover or include within the purview thereof the construction employed by the Defendants, as hereinbefore set forth;

(g) By reason of the proceedings had and taken in the United States Patent Office in the prosecution of the application whereon ultimately issued the patent in suit, the patentee therein named, his legal representatives and assigns, are estopped from maintaining the same in such scope as to cover or embrace any apparatus which the Defendants may have made, used or sold, as hereinbefore set forth.

All of such affirmative allegations by the Defendants are denied by the Plaintiffs and stand at issue.

10. The Plaintiffs allege that the invention purported to be covered by the terms of the patent in suit is an improvement in pipe line; and the Defendants deny such allegation on the part of the Plaintiffs, and allege that the purported improvement applies to a pipe joint only. These matters remain at issue.

11. It is alleged by the Plaintiffs and admitted by the Defendants that, subsequent to the grant of

the letters patent in suit and prior to the commencement of this suit, the Plaintiff, California Corrugated Culvert Co., has given written notice to the Defendants of said letters patent (see pretrial Exhibit 90) and of the said Plaintiff's claims of infringement thereof, and that the manufacture and sale of devices having the characteristics of Exhibits 3, 8, 47 and 48 have been continued by Defendants for irrigation purposes subsequent to said notice, as such manufacture is defined in Paragraph 4 hereof.

12. The Plaintiffs allege that the Plaintiff, California Corrugated Culvert Co., and its sublicensees, have manufactured and sold devices in accordance with the letters patent in suit, and that the same have met with great commercial success; and these allegations the Defendants deny; and such allegations and denials stand at issue. [57]

13. The Plaintiffs allege their right to an accounting for damages and/or profits by reason of the infringement charged against the Defendants, and pray for trebling of damages because of wilful infringement; and further allege their right to an injunction against continued infringement; Plaintiffs also pray for costs of suit; and the Defendants deny the right of the Plaintiffs to either an accounting of any nature, or to treble damages, or to an injunction, and deny that Plaintiffs are entitled to costs of suit, and seek costs of suit and further relief; and such matters stand at issue to abide the decree of this Court.

14. The questions of fact remaining for determination by the Court are:

- a. Is Claim 3 of the letters patent in suit valid?
- b. Do the devices sold by the Defendants and manufactured by them within the meaning of the "manufacture", as defined in Paragraph 4 of this order, which devices are exemplified by pretrial Exhibits 47 and 48 and 3 and 8, come within the terms of Claim 3 of the patent in suit with sufficient exactitude to constitute infringements thereof?
- c. Does the patent in suit cover improvement in pipe line or in pipe joint, or either? If so, is the invention novel and useful?
- d. Has the Plaintiff, California Corrugated Culvert Co., and its sublicensees, manufactured and sold devices in accordance with Claim 3 of the letters patent in suit?
- e. Have such devices, if the Court finds affirmatively upon the next preceding issue, met with great commercial success?
- f. Is the alleged "pipe joint", set forth in the claim 3 of the patent in suit, the statutory subject of invention, and is the same any new or useful art within the statutes in such case made and provided, and does the same constitute patentable subject matter under such statutes?
- g. Does Claim 3 of the patent in suit disclose patentable [58] invention over and in view of the state of the prior art at and prior to the time application for said patent was filed?
- h. Does Claim 3 of the patent in suit purport to

cover, and cover, a mere aggregation of elements in view of such state of the prior art, or does the said Claim 3 constitute a validly patentable combination?

i. Is Claim 3 of the patent in suit, in view of the state of the prior art, to be so narrowly construed as to be incapable of being validly applied to pipe joint construction, or is it to be liberally construed for a meritorious invention and entitled to a commensurate range of equivalents?

j. In the light of such prior art, would it require invention or only the ordinary skill of the art to which the alleged invention of the patent in suit appertains to make the same?

k. Was the invention set forth in Claim 3 of the patent in suit, and the material and substance thereof, therein claimed as new, invented by others prior to the alleged invention thereof by the Plaintiff, Karl Lanninger; and, if so, were such alleged inventions shown and described in printed publications in the United States before the alleged invention by the said patentee and more than two years prior to the filing of the application for patent upon which the patent in suit issued?

l. In view of the function, structure and purpose of the alleged invention, as illustrated, described and set out in the claims of the letters patent in suit, can the Plaintiffs seek for or obtain a construction of Claim 3 of said patent sufficiently broad to cover or include within the purview thereof the construction employed by the Defendants, as such construction is exemplified by Exhibits 3, 8, 47 and



48, and as those exhibits are defined in Paragraph 4 of this order?

m. Was the patent in suit issued by the United States Patent Office without due investigation; and was an important part of [59] relevant prior art overlooked; and were other parts of such prior art improperly applied and construed in the proceedings in the Patent Office leading up to issue of the patent in suit?

15. Remaining to be determined by the Court, as conclusions of law, are:

a. Have the defenses of invalidity been proved by the Defendants to a degree sufficient to overcome the legal presumption of validity of Claim 3 of the patent in suit?

b. Is said Claim 3 of the patent in suit valid?

c. Is said Claim 3 entitled to a broad or narrow construction?

d. Have Plaintiffs proved infringement by preponderance of evidence?

e. Have the Defendants infringed Claim 3 of the patent in suit?

f. Are the Plaintiffs entitled to an accounting against Defendants ;and, if so, are the Plaintiffs entitled to treble damages?

g. Are the Plaintiffs entitled to a preliminary or permanent injunction through order or decree of this Court?

h. To whom shall costs of suit be awarded by decree?

16. Commencing on the following page is a com-



plete list of the pretrial exhibits offered by the respective parties, with a brief designation of the nature of each exhibit: [60]

## LIST OF EXHIBITS

### Exhibit

- 1—(Defs'.) Copy of Lanninger Patent, No. 1,749,942.
- 2—(Defs'.) Model of coupler similar to those made by Plaintiff, California Corrugated Culvert Company.
- 2A—(Defs'.) Portion of model (constituting Defendants' Exhibit 2) to which links are hinged.
- 3—(Defs'.) Model of couple claimed by Plaintiffs to infringe Lanninger Patent.
- 3A—(Defs'.) Section of model, (constituting Exhibit 3) having a larger diameter end, and corresponding to Pierce coupler.
- 3B—(Defs'.) Section of model, (constituting Exhibit 3) having a smaller diameter end.
- 4—(Defs'.) Sample of packing similar to packing in Exhibit 3A.
- 5—(Defs'.) Model of coupler.
- 6—(Defs'.) Elastic packing for coupler of model comprising Exhibit 5.
- 7—(Defs'.) Model of coupler.
- 7A—(Defs'.) One part of body of couple of Defendants' Exhibit 7.
- 7B—(Defs'.) Another part of the body of coupler of Defendants' Exhibit 7.

List of Exhibits—(Continued)

Exhibit

7C—(Defs'.) Another part of the body of coupler of Defendants' Exhibit 7.

8—(Defs'.) Model of device claimed by Plaintiffs to infringe Lanninger Patent.

8A—(Defs'.) Larger end of device of Exhibit 8.

8B—(Defs'.) Smaller end of device of Exhibit 8.

9—(Defs'.) Model of coupler.

9A—(Defs'.) Part of model of Defendant's Exhibit 9.

9B—(Defs'.) Part of model of Defendants' Exhibit 9.

9C—(Defs'.) Part of model of Defendants' Exhibit 9.

10—(Defs'.) Model of coupler.

10A—(Defs'.) Larger end of model (Defendants' Exhibit 10).

10B—(Defs'.) Smaller end of model (Defendants' Exhibit 10).

(All above Exhibits introduced in deposition taken on behalf of Defendants.) [61]

11—(Plffs'.) Copy of Lanninger Patent, No. 1,747,942, constituting a patent in suit. (Note: copy of this patent previously introduced as Defendants' Exhibit 1).

12—(Plffs'.) Certificate of Title to Lanninger Patent.

13—(Plffs'.) Copy of license granted under Lanninger Patent to California Corrugated Culvert Company.

## List of Exhibits—(Continued)

## Exhibit

- 14—(Plffs'.) Copy of authorization from Lanninger authorizing California Corrugated Culvert Company to file and prosecute patent suits.
- 15—(Plffs'.) Letter from Karl Lanninger, dated March 14, 1941 at Frankfort, Germany, to show that he was a resident of Germany.
- 16—(Plffs'.) Compilation of Sidney W. Klahn, dated July 15, 1941, pertaining to devices manufactured by Oregon Culvert Pipe Company.
- 17—(Plffs'.) Pipe coupling claimed to be manufactured by Plaintiffs under the Lanninger Patent.
- 18—(Plffs'.) Sketch illustrating one construction and method of operation of Lanninger patent.
- 19—(Plffs'.) Sketch illustrating construction and operation of coupler of Plaintiffs' Exhibit 17.
- 20—(Plffs'.) Sketch illustrating construction and method of operation of couple comprising Defendants' Exhibit 3.
- 21—(Plffs'.) Sketch illustrating construction and method of operation of coupler comprising Defendants' Exhibit 8.
- 22—(Defs'.) Copy of United States Patent No. 1,945,293, issued January 30, 1934 to R. H. Pierce.

List of Exhibits—(Continued)

Exhibit

- 23—(Defs'.) Copy of United States Patent No. 2,221,284, issued November 12, 1940 to Rolfe A. Folsom.
- 24—(Defs'.) Copy of United States Patent No. 1,363,565, issued December 28, 1920 to G. Christenson.
- 24A—(Defs'.) Enlargement of drawing of patent of Exhibit 24.
- 25—(Defs'.) Copy of United States Patent No. 222,195 issued December 2, 1879 to T. J. McGowan.
- 25A—(Defs'.) Enlargement of drawing of Patent of Exhibit 25.
- 26—(Defs'.) Copy of United States Patent No. 948,312, issued February 8, 1910 to R. M. Dixon. [62]
- 27—(Defs'.) Copy of United States Patent No. 999,169, issued July 25, 1911 to T. N. Jones.
- 28—(Defs'.) Copy of United States Patent No. 557,296, issued March 31, 1896 to R. Wigan.
- 28A—(Defs'.) Enlargement of drawing of drawing of patent of Exhibit 28.
- 29—(Defs'.) Copy of United States Patent No. 685,818, issued November 5, 1901 to R. M. Close.
- 29A—(Defs'.) Enlargement of patent drawing of patent of Exhibit 29.
- 30—(Defs'.) Copy of Patent No. 1,009,303, issued November 21, 1911 to C. C. Hansen.

## List of Exhibits—(Continued)

## Exhibit

- 30A—(Defs'.) Enlargement of drawing of patent of Exhibit 30.
- 31—(Defs'.) United States Patent No. 631,661, issued August 22, 1899 to E. L. Perry, Jr.
- 32—(Defs'.) Copy of Patent No. 580,084, issued April 6, 1897 to H. H. Gorter.
- 32A—(Defs'.) Enlargement of drawing of Patent of Exhibit 32.
- 33—(Defs'.) Copy of Patent No. 1,202,506, issued October 24, 1916 to R. Galloway.
- 33A—(Defs'.) Enlargement of drawing of Patent of Exhibit 33.
- 34—(Defs'.) Copy of Patent No. 628,018, issued July 4, 1899 to J. Muskett.
- 34A—(Defs'.) Enlargement of patent drawing of Patent of Exhibit 34.
- 35—(Defs'.) Copy of Patent No. 1,619,439 issued March 1, 1927 to W. T. Skillern.
- 36—(Defs'.) Copy of Patent No. 1,255,577, issued February 5, 1918 to E. F. Berry.
- 37—(Defs'.) Copy of Patent No. 1,448,646, issued March 13, 1923 to J. F. Ward.
- 38—(Defs'.) Copy of Patent No. 1,117,961 issued November 17, 1914, to J. H. Phillips, Jr.
- 38A—(Defs'.) Enlargement drawing of Patent of Exhibit 38.
- 39—(Defs'.) Copy of Patent No. 1,292,524, issued January 28, 1919 to L. W. Serrell.
- 40—(Defs'.) Copy of Patent No. 811,812, issued February 6, 1906 to E. V. Anderson. [63]



List of Exhibits—(Continued)

Exhibit

41—(Defs'.) Copy of Patent No. 1,274,406, issued August 6, 1918 to J. W. Frazier and F. E. Hansen.

41A—(Defs'.) Enlargement of drawing of patent of Exhibit 41.

42—(Defs'.) Copy of Patent No. 1,130,726, issued March 9, 1915 to L. W. Greve.

42A—(Defs'.) Enlargement of drawing of patent of Exhibit 42.

43—(Defs'.) Copy of Patent No. 965,998, issued August 2, 1910 to T. Evans.

44—(Defs'.) Copy of Patent No. 543,871, issued August 6, 1895 to L. J. Houze.

45—(Defs'.) Certified copy of File Wrapper of Lanninger Patent, No. 1,747,942.

46A—(Defs'.) ) Photostat sheets and bulletins

46B—(Defs'.) ) showing illustrations of gas-

46C—(Defs'.) ) kets alleged to have been

46D—(Defs'.) ) put out by E. F. Houghton

46E—(Defs'.) ) & Company.

46F—(Defs'.) )

47—(Defs'.) Model of coupler alleged to conform to Pierce Patent No. 1,945,293.

47A—(Defs'.) " " " (male part)

47B—(Defs'.) " " " (female part).

48—(Defs'.) Model of coupling made in accordance with the specification of Pierce Patent No. 1,945,293.

48A—(Defs'.) " " " (male end).

48B—(Defs'.) " " " (female end).

## List of Exhibits—(Continued)

## Exhibit

- 48C—(Defs'.)    "    "    "    (hook swinging as  
a lock to connect the two members).
- 49—(Defs'.)    Model of pipe coupling claimed to  
be constructed according to Lanninger patent.
- 49A—(Defs'.)    "    "    "    (male end).
- 49B—(Defs'.)    "    "    "    (female end). [64]
- 50—(Defs'.)    Model of coupling alleged to be  
constructed according to specifications of  
Lanninger Patent.
- 50A—(Defs'.)    "    "    "    (male end).
- 50B—(Defs'.)    "    "    "    (female end).
- 50C—(Defs'.)    "    "    "    (the band about  
the male end).
- 51—(Defs'.)    Model of pipe coupler alleged to  
be made according to the specifications of  
the Lanninger Patent.
- 51A—(Defs'.)    "    "    "    (male end).
- 51B—(Defs'.)    "    "    "    (female end).
- 51C—(Defs'.)    "    "    "    (ring about the  
center of the device).
- 52—(Defs'.)    Model of coupler alleged to be con-  
structed according to specifications of Patent  
No. 999,169 to T. N. Jones (Defendants' Ex-  
hibit 27).
- 52A—(Defs'.)    "    "    "    (male portion).
- 52B—(Defs'.)    "    "    "    (female portion).
- 52C—(Defs'.)    "    "    "    (center portion).
- 53—(Defs'.)    Model of coupler alleged to be  
made in accordance with specifications of  
Patent No. 1,292,524 of Serrell (Defendants'  
Exhibit No. 39).

## List of Exhibits—(Continued)

## Exhibit

- 53A—(Defs'.)   "   "   "   (male end).  
53B—(Defs'.)   "   "   "   (female end).  
53C—(Defs'.)   "   "   "   (central portion).  
54—(Defs'.)   Model of coupler alleged to be constructed as composed of specifications of Lanninger Patent, Jones Patent (No. 999,169) and Serrell Patent (No. 1,292,524).  
54A—(Defs'.)   "   "   "   (male end).  
54B—(Defs'.)   "   "   "   (female end).  
54C—(Defs'.)   "   "   "   (central ring).  
55—(Defs'.)   Model of female end of Pierce Patent, No. 1,945,293.  
56—(Plffs'.)   Catalog issued by R. H. Pierce Manufacturing Co., Eugene, Oregon, having on front cover picture of coupling and notation thereunder [65] "patented January 30, 1934, Patent No. 1,945,293."  
57—(Plffs'.)   Orders of Oregon Culvert Pipe Co. for pipe sold.  
58—(Plffs'.)   Deposition of Lancelot W. Hanson taken on behalf of Defendants.  
59—(Plffs'.)   Drawings of model (Plaintiffs' Exhibit 17).  
60—(Plffs'.)   Drawings of model (Defendants' Exhibit 47).  
61—(Plffs'.)   Drawings of model (Defendants' Exhibit 48).  
62—(Plffs'.)   Drawings of model (Defendants' Exhibit 49).

## List of Exhibits—(Continued)

## Exhibit

- 63—(Plffs'.) Drawings of model (Defendants' Exhibit 50).
- 64—(Plffs'.) Drawings of model (Defendants' Exhibit 51).
- 65—(Plffs'.) Drawings of model (Defendants' Exhibit 52).
- 66—(Plffs'.) Drawings of model (Defendants' Exhibit 53).
- 67—(Plffs'.) Drawings of model (Defendants' Exhibit 54).
- 67—(Plffs'.) Drawings of model (Defendants' Exhibit 55).
- 69—(Plffs'.) Drawings, on one sheet, of Lanninger structure and of Defendants' Exhibit 47 and 48, and claim 3 claimed applied.
- 70—(Plffs'.) Model of Figure 1 of Lanninger Patent No. 1,747,942.
- 71—(Plffs'.) Three photographs of installation in Oregon of pipe line with the couplers manufactured by Plaintiffs.
- 72—(Plffs'.) Four photographs of installation in Oregon of pipe line with couplers manufactured by Plaintiffs.
- 73—(Plffs'.) One photograph of installation in Oregon of pipe line with couplers manufactured by Plaintiffs.
- 74—(Plffs'.) Three photographs of pipes with couplers manufactured by Plaintiffs and sold in Oregon.

List of Exhibits—(Continued)

Exhibit

- 75—(Plffs'.) Two photographs of pipe lines installed in Oregon with couplers similar to Defendants Exhibits 3 and 48.
- 76—(Plffs'.) Two photographs of pipe line with couplers installed in Oregon, the couplers being similar to Defendants' Exhibit 8, 47, 3 and 48. [66]
- 77—(Plffs'.) Compilation by L. W. Hanson from records of Plaintiff, California Corrugated Culvert Co., of sales of couplers by said company to Oregon Culvert & Pipe Co. of Portland, Oregon, and claimed by Plaintiffs to be within Claim 3 of Lanninger patent in suit.
- 78—(Plffs'.) Copy of letter dated January 2nd, 1942, California Corrugated Culvert Co. to Alien Property Custodian, Washington, D. C.
- 79—(Plffs'.) Copy of letter dated January 6, 1942, The Bank of The Manhattan Company, New York, to California Corrugated Culvert Company.
- 80—(Plffs'.) Certified copy of Vesting Order No. 27, Office of Alien Property Custodian.
- 81A—(Defs'.) A model (consisting of two parts, marked 81-A and 81-B, respectively), having cut from it a 45-degree section, which model, it is claimed by the defendants, responds to the characteristics of the patented structure disclosed in U. S. Letters Patent No. 1,945,293 issued to Ralph H. Pierce.



## List of Exhibits—(Continued)

## Exhibit

- 82A—(Defs'.) A model (consisting of three parts, marked 82-A, 82-B and 82-C, respectively) of pipe coupling, with inserted pipe ends, which it is claimed responds to structure shown in U. S. Letters Patent No. 1,945,293, issued to Ralph H. Pierce, etc.
- 83—(Defs'.) Printed copy of United States Letters Patent No. 2,253,232, issued August 19, 1941, to R. L. Gheen.
- 84—(Defs'.) Certified copy of complaint, stipulation for dismissal and order of dismissal in California Corrugated Culvert Co., a corporation, Plaintiff, v. R. H. Pierce, Defendant, Civil No. 234, in District Court of United States for District of Oregon.
- 85A—(Defs'.) Letter, November 12th, 1930, California Corrugated Culvert Co., H. M. Chadwick, to R. H. Pierce.
- 85B Letter, August 4, 1931, H. M. Chadwick to Ralph H. Pierce.
- 85C Letter, November 17, 1932, California Corrugated Culvert Co., L. W. Hanson, Asst. Engr., to R. H. Pierce.
- 85D Letter, June 20, 1933, H. M. Chadwick to Ralph H. Pierce.
- 85E Letter, August 21, 1933, H. M. Chadwick to Ralph H. Pierce. [67]
- 85F—(Defs'.) Letter, September 25, 1933, H. M. Chadwick to R. H. Pierce.

List of Exhibits—(Continued)

Exhibit

- 85G Letter, October 13, 1933, California Corrugated Culvert Co., L. W. Hanson, Asst. Engr., to R. H. Pierce.
- 85H Letter, January 5, 1934, California Corrugated Culvert Co., L. W. Hanson, Asst. Engr., to Ralph H. Pierce.
- 85I Copy of letter, September 30, 1937, W. H. Pierce Manufacturing Co., R. H. Pierce, to H. M. Chadwick.
- 85J Letter, October 4, 1937, California Corrugated Culvert Co., H. M. Chadwick, to Ralph H. Pierce.
- 85K Copy of letter, October 8, 1937, R. H. Pierce Manufacturing Co., R. H. Pierce, to H. M. Chadwick.
- 85L Letter, October 12, 1937, H. M. Chadwick to R. H. Pierce.
- 85M Copy of letter, October 14, 1937, R. H. Pierce Manufacturing Co. to H. M. Chadwick.
- 85N Letter marked "Personal", addressed "Dear Ralph" and signed "H. M. C."
- 85O Letter, October 20, 1937, H. M. Chadwick to R. H. Pierce.
- 85P Copy of letter, October 22, 1937, R. H. Pierce to California Corrugated Culvert Co.
- 85Q Letter headed "Personal", addressed "Dear Ralph" and signed "Chad."

## List of Exhibits—(Continued)

## Exhibit

- 85R Letter, consisting of two pages, October 25, 1937, California Corrugated Culvert Co., H. M. Chadwick, to R. H. Pierce.
- 85S Copy of letter, October 27, 1937, R. H. Pierce Manufacturing Co., R. H. Pierce, to California Corrugated Culvert Co.
- 85T Copy of letter, October 29, 1937, R. H. Pierce to California Corrugated Culvert Co.
- 85U Letter, November 2, 1937, California Corrugated Culvert Company, H. M. Chadwick, to Ralph Pierce.
- 85V Letter, November 9, 1937, California Corrugated Culvert Co., H. M. C., to Ralph Pierce. [68]
- 85W—(Defs'.) Copy of letter, November 12, 1937, H. M. Pierce Manufacturing Co., H. M. Pierce, to California Corrugated Culvert Co.
- 85X Letter, November 16, 1937, California Corrugated Culvert Company, H. M. Chadwick, to R. H. Pierce.
- 85Y Copy of letter, November 22, 1937, R. H. Pierce Manufacturing Co., R. H. Pierce, to California Corrugated Culvert Co.
- 85Z Letter, January 31, 1938, H. M. Chadwick to R. H. Pierce.
- 86—(Defs'.) Agreement, dated December 22nd, 1937, between California Corrugated Culvert Co., etc., and R. H. Pierce.

List of Exhibits—(Continued)

Exhibit

87—(Defs'.) Office file wrapper of George F. McDougall.

87A Seven typewritten sheets in the back of Exhibit 87, headed "Specification".

87B Photostatic copy of Figures I, II, and III, bearing legend "Inventor Ralph H. Pierce by G. F. McDougall, Attorney".

87C Photostatic copy headed "A. D. 1894. Oct. 17. No. 19,776. Schmahl's Complete Specification", and on the side "(This drawing is a reproduction of the original on a reduced scale)".

87D A carbon copy consisting of two sheets addressed G. F. McDougall and signed in typewriting "Examiner", bearing a stamp "Mailed Dec. 30, 1937".

87E A carbon copy of letter dated January 18, 1938, Ralph H. Pierce By..... Attorney of Record to Commissioner of Patents.

87F A carbon copy of letter dated August 23, 1938, Ralph H. Pierce By ..... Attorney of Record, to Commissioner of Patents.

87G Carbon copy of letter, consisting of two pages, bearing stamp "Mailed Mar. 4, 1938," Examiner to G. F. McDougall.

87H Printed copy of document headed "United States Patent Office. William T. Rice, of Berlin, Oklahoma Territory. Fishhook, No. 828,505", etc.

## List of Exhibits—(Continued)

## Exhibit

- 87I Letter, September 27, 1937, G. F. McDougall to Ralph Pierce.
- 87J Letter, January 7th, 1938, California Corrugated Culvert Co., L. W. Wyman, Vice Pres. & Chief Engr., to George F. McDougall. [69]
- 87K—(Defs'.) Letter, January 12, 1938, R. H. Pierce Manufacturing Co., R. H. Pierce, to George F. McDougall.
- 87L A sheet containing carbon copy of unsigned letter dated January 13, 1938, to Ralph H. Pierce, and letter dated Eugene, Oregon, Jan. 1938, addressed to G. F. McDougall and bearing at the bottom "Signed....., Inventor."
- 87M Letter dated Jan. 1938, R. H. Pierce, Inventor, to Mr. G. F. McDougall.
- 87N Leaflet headed "The Pierce Self-Sealing Pipe Coupler for Portable Irrigation Systems."
- 87O Leaflet headed "The Pierce Self-Sealing Pipe Coupler.
- 88—(Defs'.) Copy of letter dated January 11, 1938, addressed to Ralph H. Pierce, and unsigned.
- 88A Three sheets containing typed form of patent claims numbered 6 to 12, both inclusive.
- 89—(Defs'') Pamphlet headed "Portable Spigot Pipe," etc.



## List of Exhibits—(Continued)

## Exhibit

- 90—(Defs'.) Letter, November 30, 1940, Wm. S. Graham to Alaska Junk Company.
- 91—(Defs'.) Sheaf of purchase orders of Oregon Culvert & Pipe Co., including purchase orders of Pure Iron Culvert & Manufacturing Co.
- 92—(Defs'.) Sheaf of purchase orders of California Corrugated Culvert Company addressed to R. H. Pierce Manufacturing Company, etc.
- 93A—(Defs'.) Three sheets, the first two bearing the heading "1938 totals of various types Couplers Bought", and the third sheet being headed "Statement showing all purchases during 1939."
- 94—(Defs'.) Photostatic copy of pages 1103 and 1104 of Knights American Mechanical Dictionary, consisting of two sheets (to be supplied).
- 95—(Defs'.) Photostatic copy of page 1259, consisting of one sheet, of Knights American Mechanical Dictionary (to be supplied).
- 96—(Defs'.) Photostatic copy of page 876 of Knights American Mechanical Dictionary, consisting of one sheet (to be supplied).
- 97—(Defs'.) Order forms of Chicago Belting Company.
- 98—(Defs'.) Catalog of The Garlock Packing Company.
- 99—(Defs'.) Order form of The Garlock Packing Company. [70]

## List of Exhibits—(Continued)

## Exhibit

- 100—(Defs'.) Catalog of The Anchor Packing Company.
- 101—(Defs'.) Catalog of Belmont Packings.
- 102—(Defs'.) Catalog 20 of General Rubber & Supply Co.
- 103—(Defs'.) Catalog of Johns-Manville Packings.
- 104—(Defs'.) Catalog of Leather Packings issued by Alexander Brothers.
- 105—(Defs'.) Book bearing legend on cover "Water and Gas Works Appliances and Pumping Machinery. R. D. Wood & Co., Philadelphia."
- 106—(Plffs'.) Photostatic copy of letter dated July 12, 1939, R. H. Pierce Manufacturing Co. by R. H. Pierce, to California Corrugated Culvert Company, to be supplied.

17. Where the foregoing list of exhibits makes use of the word "allege" in describing any exhibit or exhibit, it will be understood that the word "alleged", so used, should be construed to mean "claimed". Unless specifically excepted to hereinafter, the origin of any particular exhibit, the authenticity of any letter and/or writing, the fact that the same was mailed and received and delivered, and that any date or dates shown are correct, and that any exhibit is what it purports to be, will be conceded by both parties.

18. The following pretrial exhibits are offered by the respective parties without objection by the other party. Where exhibit numbers are referred to, they shall be understood to include all sub-numbers:

1, 2, 4, 6, 11, 12, 13, 14, 15, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44, 45, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 79, 80, 90, 91, 93, 94, 95, 96 and 106.

19. The following exhibits (including all sub-numbers thereof) are objected to by the parties on the ground that the same are irrelevant and immaterial:

22, 23, 71, 82, 83, 84, 86, 89, 92, 97, 98, 99, 100, 101, 102, 103 and 104.

20. The following exhibits (including all sub-numbers thereof) are objected to by the respective parties on the ground that the same are not pursuant to the patents which they purport to represent:

3, 5, 7, 8, 9, 10, 17, 47, 48, 49, 50, 51, 52, 53 and 55.

21. Pretrial Exhibit 16 is objected to by the Defendants as being not the original record. No objection is interposed to its use as a memorandum, but objection is made to its probative value.

22. Pretrial Exhibits 20 and 21 are objected to by the Defendants as being distorted drawings not correctly illustrating the subject matter.

23. Pretrial Exhibits 35 and 37 are objected to by the [72] Plaintiffs as not being prior patents and as not being in the prior art.

24. Pretrial Exhibits 46a to 46f, inclusive, are

offered by the Defendants only for the purpose of disclosing the time of disclosure and the character as shown by drawings and cuts and the trade names of certain gaskets or packings delineated. The Plaintiffs concede the dates of origin of the exhibits and the sources of origin to be as disclosed by the exhibits, but object to the introduction as having probative force of any descriptive matter in the exhibits.

25. Pretrial Exhibit 54, and sub-numbers a, b and c, is objected to by the Plaintiffs as being a hypothetical structure not pursuant to any one of the three patents named in the description of the exhibit.

26. The following numbered exhibits, including any sub-numbers thereof, are objected to by the opposing parties as being incompetent, irrelevant and immaterial:

57, 71, 72, 73, 74, 75, 76, 87, 88 and 105.

27. Pretrial Exhibit 58 is objected to by the Defendants only if, under the rules of Court, it shall prove inadmissible for any reason by reason of the attendance on the trial of the deponent.

28. Pretrial Exhibit 69 is objected to by the Defendants only as to the attempted application of the drawings and reference numbers thereon made.

29. Pretrial Exhibit 77 is objected to by the Defendants as incompetent, irrelevant and immaterial for any purpose other than as a memorandum, but is not objected to if used as a memorandum of aid to the testimony of a witness.

30. Pretrial Exhibit 78 is objected to by the Defendants as containing self-serving declarations.

31. Pretrial Exhibit 81 is objected to by the Plaintiffs on the ground that it is irrelevant and immaterial, and does not conform to the Pierce patent, and is fragmentary. [73]

32. Pretrial Exhibit 85 is objected to by the Plaintiffs on the ground that it is irrelevant and immaterial, but authenticity of the correspondence is conceded, but the authority of the parties, Chadwick or Hanson to bind the corporate Plaintiff, California Corrugated Culvert Co., is denied.

Entered this 19th day of August, 1942.

LEON R. YANKWICH

Judge

[Endorsed]: Filed August 19, 1942. [74]

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And Afterwards, to wit, on the 1st day of September, 1942, there was duly Filed in said Court, an Opinion, in words and figures as follows, to wit:

[75]

[Title of District Court and Cause.]

### DECISION

Appearances:

Theodore J. Geisler

L. R. Geisler

Platt Building, Portland, Oregon

William S. Graham

111 Sutter Street

San Francisco, California



James H. Hazlett,  
for Alien Property Custodian  
Assistant United States Attorney  
Portland, Oregon  
Attorneys for Plaintiffs

J. S. Middleton  
1035 Pacific Building  
Portland, Oregon  
Attorneys for Defendants

Yankwich, District Judge:

The above entitled cause, heretofore tried and submitted, is hereby determined as follows:

Decree ordered for the plaintiff, as prayed.

The court is of the view that the patent is valid. While the elements of the combination are old, the combination achieves a result not heretofore attained or anticipated in the art. The best references are far afield from the patented device.

I am also of the view that the defendants' device infringes. [76]

Some of the experts for the defendants sought to find two or three deviations in the accused device. The stress, on the argument, however, was laid on one departure only: the "V" or "U" shape packing.

It is true that the inventor throughout speaks of a flange packing. It may also be conceded that the meaning of the two kinds of packing (flange, or "V" or "U" shape) is well established in the trade.

However, that does not determine the matter. To avoid infringement, the new element must achieve

a different function or a different or better result. This is not the case here.

The element in the accused devices, while different in shape, performs the same function, in the same manner.

Hence the finding that the patented device is valid and that the defendants have infringed Claim 3 of Letters Patent 1,747,942, Lanninger.

The interlocutory decree is to provide for injunction to issue against the defendants, enjoining infringement, manufacture, or sale, and reference to Irving Rand, Esquire, Special Master, to take an accounting and ascertain the damages to be awarded to plaintiffs.

Dated September 1, 1942.

LEON R. YANKWICH

District Judge.

[Endorsed]: Filed September 1, 1942. [77]

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And Afterwards, to wit, on the 8th day of September, 1942, there was duly Filed in said Court, Exceptions by defendant to proposed findings, in words and figures as follows, to wit: [78]

[Title of District Court and Cause.]

#### EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendants at this time except to the proposed findings of fact and conclusions of law served

upon their counsel on September 5, 1942, in the following particulars:

I.

The Defendants except generally to all of such findings, which are to the effect that the letters patent in suit legally issued to Karl Lanninger.

II.

The Defendants except generally to all of such findings, which are to the effect that the patent in suit has been infringed.

III.

The Defendants except specifically to the findings incorporated in Paragraph VII, to the effect that the several elements of combination of Claim 3 of the patent in suit are not found in a similar operative relation in a prior device or publication, and to the effect that the prior art does not disclose the inventive concept, for the reason that, under the ruling of the Court during the trial, the Defendants were precluded from introducing in evidence the prior art in the field of flexible joints for hose lines; and, generally, as to the [79] remaining findings in said paragraph incorporated, the same are not supported by the proof.

IV.

The Defendants further except to such findings of validity of patent and infringement thereof, for the reason that, under the rulings of the Court during the trial, the Defendants were precluded from introducing offered proof to the effect that

the Plaintiff, California Corrugated Culvert Co., a corporation, has so construed Claim 3 of the patent in suit and its applicable effect, and the Defendants have so acted upon such construction, that Plaintiff, California Corrugated Culvert Co., is now estopped to assert the scope of Claim 3 of the patent in suit to include the structures which are found to be infringing structures under the general effect of the findings.

V.

Additionally to the specific reasons for exception hereinbefore and in Paragraphs III and IV set forth, the Defendants base all of their exceptions, herein set forth, upon the proposition that the findings in these exceptions referred to are not supported by the proof.

Respectfully submitted,  
(Signed) J. S. MIDDLETON

Attorney for Defendants

Exceptions overruled. L.R.Y.

[Endorsed]: Filed September 8, 1942. [80]

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And Afterwards, to wit, on Wednesday, the 9th day of September, 1942, the same being the 56th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [81]



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on to be heard before the Court, and having been brought to final hearing on the merits upon pleading and pretrial order, and proof and evidence, oral and documentary, adduced by both parties; and counsel for the respective parties having orally argued the cause, and the same having been fully considered by the Court, and the Court having heretofore made its order for judgment in favor of the plaintiffs herein; now, in accordance with the pleadings, the pretrial order, and the proof presented, the Court makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

#### I.

That the plaintiff, California Corrugated Culvert Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, and has a regular and established place of business in the City of Berkeley, County of Alameda, [82] State of California; that the plaintiff, Leo T. Crowley, is the Alien Property Custodian of the United States, and was, by order of this Court, subsequent to filing of the complaint herein, substituted as a party plaintiff in the place and stead of the original plaintiff, Karl Lanninger, a German National, residing in Germany.



## II.

That the defendants Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, are inhabitants and residents of the City of Portland, County of Multnomah, State of Oregon, and have an established place of business in said City, County and State, and are doing business thereat as a co-partnership under the name and style of Alaska Junk Co., all within the jurisdiction of this Court.

## III.

That the complaint in this cause was filed on or about the 2nd day of April, 1941, charging defendants with infringement of United States Letters Patent numbered 1,747,942, for Pipe Line, granted February 18, 1930 to Karl Lanninger, and praying for an injunction and an accounting, the said Lanninger being shown by said Letters Patent to be a German National; that the said Lanninger was an original plaintiff at the time of the filing of the complaint herein.

## IV.

That the said original plaintiff, Karl Lanninger, was the sole inventor of the invention described in and claimed by the United States Letters Patent, here in suit, numbered 1,747,942, for Pipe Line, and that, at all times since the grant of said Letters Patent on the 18th day of February, 1930, and until the [83] 18th day of June, 1942, the said Karl Lanninger was the owner of all right, title and interest in, to and under said Let-

ters Patent, save and except that said Karl Lanninger, did, prior to the commencement of this suit, to-wit, on the 14th day of August, 1937, grant to plaintiff, California Corrugated Culvert Co., an exclusive license right under said Letters Patent throughout the United States and the territories thereof, to manufacture and sell devices covered by said Letters Patent for irrigation purposes, and, ever since said last mentioned date, said license has been and now is in force and effect. That on the 18th day of June, 1942, the said Karl Lanninger being then an Alien Enemy due to the Declaration of War between the United States and Germany, the Alien Property Custodian of the United States, Leo T. Crowley, did by Vesting Order Number 27 vest in the Alien Property Custodian of the United States all right, title and interest in, to and under said Letters Patent together with all accrued royalties and all rights of action for infringement and accountings for damages and profits arising therefrom.

## V.

That the invention disclosed and described in said Letters Patent and covered by Claim 3 thereof, (which is the only Claim in suit), comprises a pipe joint in connection with pipes, the joints having a rigid sleeve member provided with an internal annular groove, and having an elastic packing member within the rigid sleeve, one portion of the packing member being a radially extended portion called

a flange which is held by friction in the annular groove of the sleeve, while another portion of the packing member is free to frictionally enclose and move with an unthreaded pipe end inserted thereinto through an open end of the sleeve, whereby a flexible hinged relationship of the pipe and rigid sleeve is provided, and whereby a water seal is provided at both the [84] groove and circumferentially of the end portion of the inserted unthreaded pipe, such sealing capacity being increased by introduction of hydraulic pressure of fluid in the pipe line, and means for hingedly securing the sleeve on the unthreaded pipe end and yet maintain the hinged relationship of the sleeve and unthreaded pipe, and prevent the joint from blowing out under the hydraulic pressure in the pipe line.

## VI.

That a new and useful combination is provided by said Letters Patent and Claim 3 thereof, in that the elements cooperate to provide a new and useful result. The combination of the elements of Claim 3 is in providing a flexible joint of elements relatively releasably held in assembled operative relation and readily disassembled, and mechanically providing flexibility in the joints instead of having a joint of flexible material. The rigidity of the sleeve permits an annular groove to be made therein, which receives and holds the flange of the packing member, and supports it perpendicular to the axis of the sleeve, so that no matter whether the free cylindrical portion of the

packing member is deformed by movement of the inserted pipe end, the water seal of the flange in the groove is undisturbed. The packing flange also cooperates with the rigid sleeve and the unthreaded pipe end by furnishing resilient support circumferentially for the unthreaded pipe which is inserted therethrough. The free cylindrical portion of the packing member seals against leakage around the circumference of the unthreaded pipe end which is resiliently supported by the flange portion, thus providing hinged movement, while preserving the water seals. The means for hingedly securing the sleeve of the unthreaded pipe end cooperates to relatively secure the sleeve on the unthreaded pipe end in a manner to preserve the flexibility of the mounting of the unthreaded pipe end in the sleeve, and also prevents the joint from pulling apart under hydraulic pressure necessary to raise water over irregular ground, for showering or overheard irrigation, and [85] also when it is desired to adjust the alignment of the pipe line without disconnecting its parts.

## VII.

The several elements of the combination of Claim 3 are individually old, but are not found in a similar operative relation in any prior device or publication; nor does the prior art disclose the inventive concept or achieve the same result of a flexible joint for pipe lines wherein a string of pipes may have relatively hinged relationship by means of an elastic packing sealing member



mounted within a rigid sleeve, wherein the packing member has a radially extended portion held in a sleeve groove and a free portion frictionally enclosing and sealing against an unthreaded pipe end within the sleeve, together with means for releasably securing the sleeve and unthreaded pipe end relatively so as to maintain the flexibility of the joint. Claim 3 of the patent in suit is not anticipated; the best prior art references are far afield from the patented device; nor is there an estoppel of the patent owner by the file wrapper requiring a limitation of Claim 3 more narrowly than the plain import of its terms.

### VIII.

The evidence in this suit has primarily been based on the novelty and utility of the invention for overhead or shower irrigation of uneven and unlevelled ground. Prior to the invention of Laninger, overhead or shower irrigation had been carried on by permanent installations or systems of pipes with mechanically fixed non-flexible joints, the showering range of which is limited to approximately twenty feet on each side of the pipe line, such systems requiring for practical purposes the permanent installation of lines of pipe spaced approximately forty feet apart and each [86] line the length of the irrigated field. With the Laninger invention of the flexible joint, the sealing packing member, and readily releasable securing means, such lines of pipe were made portable and



a single line of pipe may be employed and made portable from one position to another of a field, the flexibility of the joint adapting the line to accommodate itself to irregularities of the ground in various irrigation rows and to be curved to follow contour.

#### IX.

That the plaintiff, California Corrugated Culvert Co., has manufactured and sold devices made in accordance with said Letters Patent numbered 1,747,942, and Claim 3 thereof, and said devices have met acceptance with the trade and public.

#### X.

That said United States Letters Patent numbered 1,747,942, here in suit are good and valid in law, and particularly as to Claim 3 thereof, (which was the only Claim relied upon by plaintiffs in this suit), and is entitled to liberal construction as a meritorious invention.

#### XI.

That prior to the commencement of this action, plaintiff, California Corrugated Culvert Co., gave written notice to defendant of the Letters Patent here in suit and of the claim of infringement thereof.

#### XII.

That subsequent to the grant of said Letters Patent and within the six years immediately preceeding the filing of this action, and within the jurisdiction of this Court, and both prior and [87]

subsequent to the aforesaid notice, the defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co., have, and each of them has, infringed upon said United States Letters Patent, and particularly upon Claim 3 thereof, without the license or consent of plaintiff, by manufacturing and selling, within the jurisdiction of this Court, devices described in and claimed by said Letters Patent numbered 1,747,942, and particularly Claim 3 thereof; and more particularly said defendants have manufactured and sold devices of the kind exemplified by Exhibits 47 and 48 in evidence in this cause, the devices of said Exhibits each comprising a pipe joint in connection with pipe in which there is a rigid sleeve having an internal annular groove, and an elastic packing member mounted in said sleeve for receiving therethrough and flexibly mounting an unthreaded pipe end, the packing member having a radially extended rim portion frictionally held in said annular groove and functioning for the purposes of maintaining the packing member in the sleeve and effecting a seal at the groove, the said packing member having a free cylindrical portion for frictionally enclosing the unthreaded pipe end inserted therein through an open end of the rigid sleeve; that in each of said devices there is means for hingedly securing the sleeve on the unthreaded pipe end, to-wit, in the device of Exhibit 47 there is a cut-out or notched

portion in the outward lip at a free end of the rigid sleeve and the unthreaded pipe end has a hook welded on the exterior thereof which is adapted to slide through said cut-out notch and by relative axial rotation of the sleeve and unthreaded pipe, the hook engages rearwardly of the outward end lip of the sleeve with a pivotal point of engagement affording hinged movement; and in the device of Exhibit 48, there is a latch and keeper lug mounted, respectively, on the respective sleeve and unthreaded pipe end which cooperates with the hinged relation of the sleeve and unthreaded pipe [88] to hingedly secure them relatively; and said packing members and said respective securing means operate in the same way to accomplish the same result by operation of substantially the same mechanical forces as the respective packing member and securing means of the Lanninger patent, and are the equivalent thereof. It was stipulated by the parties in the pretrial Order (Paragraphs 4 and 11) that manufacture and sale by defendants has been for irrigation purposes and that, in operation of defendants' devices, each of the pipe sections has a sleeve at one end and has the opposite end thereof unthreaded, and in a pipe line, the unthreaded pipe end is inserted in the sleeve of the next adjoining pipe section.

### CONCLUSIONS OF LAW

And from the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

I.

That the ground for the jurisdiction of this Court in this cause is that said cause is a suit in equity for an injunction and an accounting arising under the laws of the United States relating to patents for inventions, the defendants being inhabitants and residents within the judicial district of this Court, and having an established place of business and having committed acts of infringement within said judicial district.

II.

That the Letters Patent here in suit, numbered 1,747,942, granted February 18, 1930, to Karl Laninger, entitled Pipe Line are good and valid in law and particularly as to Claim 3 thereof.

III.

That the plaintiff, The Alien Property Custodian of the [89] United States, Leo T. Crowley, is the owner of all right, title and interest in, to and under said Letters Patent numbered 1,747,942, save and except that the plaintiff, California Corrugated Culvert Co., has an exclusive license thereunder for irrigation purposes.

IV.

That the defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co., have, and each of them has, infringed said Letters Patent,



and particularly Claim 3 thereof, and upon the rights of plaintiffs therein and thereunder.

#### V.

That the plaintiffs are entitled to a permanent and perpetual injunction against the said defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, and those in active concert and participation with them or either of them, enjoining and restraining them, and each of them, from directly or indirectly further infringing upon said Letters Patent, or the rights of Plaintiffs therein and thereunder.

That the plaintiffs are entitled to an accounting and a recovery from the defendants, for profits made by defendants by reason of infringement, or the damages suffered by plaintiffs therefrom, and to that end the Court will refer to a special master the matter of taking an accounting and reporting same to the Court, the Court also reserving until the Report of Such Special Master the determination of increase of damages pursuant to law. [90]

#### VII.

That the plaintiffs are entitled to recover their costs of suit.

#### VIII.

That the plaintiffs are entitled to a decree in accordance with the foregoing Findings of Fact and Conclusions of Law.

The foregoing Findings of Fact and Conclusions



of Law are approved this 9th day of September, 1942.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed September 9, 1942. [91]

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And Afterwards, to wit, on Wednesday, the 9th day of September, 1942, the same being the 56th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, presiding, the following proceedings were had in said cause, to wit: [92]

In the United States District Court  
for the District of Oregon

Civil Action No. 706

CALIFORNIA CORRUGATED CULVERT  
COMPANY, a corporation, and LEO T.  
CROWLEY, Alien Property Custodian of the  
United States,

Plaintiffs,

vs.

SAM SCHNITZER, HARRY J. WOLF, ROSE  
SCHNITZER, and JENNIE WOLF, individ-  
ually, and as a co-partnership doing business  
under the name and style of Alaska Junk  
Company,

Defendants.

### INTERLOCUTORY DECREE

This cause came on to be heard at this term, upon the pleading, pretrial Order and proofs of both parties, and upon oral argument by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged, and Decreed, as follows:

#### I.

That the Letters Patent herein suit numbered 1,747,942, granted February 18, 1930, to Karl Laninger, entitled Pipe Line, and particularly Claim 3 thereof, disclosed patentable invention, are not anticipated in the prior art, and are good and valid in law.

## II.

That the plaintiff, Alien Property Custodian of the United States, Leo T. Crowley, is the owner of all right, title and interest in and to said Letters Patent numbered 1,747,942, save and except that plaintiff, California Corrugated Culvert Co., [93] has been granted an exclusive license under said Letters Patent throughout the United States and its territories for irrigation purposes, which license is in force and effect.

## III.

That the defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co., have, and each of them has, infringed upon Claim 3 of said Letters Patent numbered 1,747,942 and have violated the exclusive rights of the plaintiffs thereunder, by making and selling pipe joint devices in connection with pipe embodying and containing the invention of said Letters Patent as set forth in Claim 3 thereof, the said infringing devices, made and sold by the defendants, being more particularly shown by Exhibits 47 and 48 filed in this cause.

## IV.

That a Writ of Injunction issue out of and under the seal of this Court directed to the defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, perpetually enjoining and restraining the said defendants, and each of them,

their, and each of their associates, attorneys, clerks, servants, agents, workmen, employees, and those in active participation with them, from directly or indirectly making, using and/or selling, and/or causing to be manufactured, used and/or sold, Pipe Joints in connection with pipe heretofore manufactured and/or sold by the defendants, as exemplified by Exhibits 47 and 48 in this cause, or any other devices containing or embodying the invention of the Claims of said Letters Patent, and particularly Claim 3 thereof, and/or from in any wise infringing said Letters Patent and/or contributing to the infringement of said Letters Patent by others. [94]

#### V.

That the plaintiffs recover from the defendants, the profits, gains and advantages which the said defendants, or either of them, have received, or which may have accrued to them by reason of said infringement of said Claim 3 of said Letters Patent in suit, or the damages suffered by plaintiffs by reason of such infringement.

#### VI.

That this cause be referred to Irving Rand, Esq., Special Master, who is hereby appointed to ascertain, take, state and report to the Court an account of the infringing devices manufactured and/or sold by said defendants, which embody the invention of said Claim 3 of said Letters Patent numbered 1,747,942, and also the profits, gains and advantages which the defendant has received, or which

have been accrued to it, by reason of its infringement of said Letters Patent, and the damages which the plaintiffs have suffered by reason of said infringement; and the plaintiffs on said accounting shall have the right to cause the examination of the defendants, their agents, and employees, and also to examine other witnesses and to cause the production and examination of the books, vouchers, records and documents of said defendants, and to have all necessary process of the Court to compel such attendance and production before the said Special Master, at such times and places as said Special Master shall, from time to time, direct.

## VII.

That the plaintiffs, recover from said defendants the taxable costs of the plaintiffs in this Court and that the Plaintiffs shall have judgment and execution against the said defendants for said costs.

(Signed) LEON R. YANKWICH

United States District Judge

Dated this 9th day of September, 1942.

[Endorsed]: Filed September 9, 1942. [95]

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And Afterwards, to wit, on the 1st day of October, 1942, there was duly Filed in said Court,



a Notice of Appeal in words and figures as follows, to wit: [96]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To California Corrugated Culvert Company, a corporation; and

To Leo T. Crowley, Alien Property Custodian of the United States; Plaintiffs above named; and

To William S. Graham; and

To Theodore J. Geisler; and

To L. R. Geisler; Attorneys of record for the Plaintiff, California Corrugated Culvert Company, a corporation; and

To Carl C. Donagh, United States District Attorney for the District of Oregon; and

To James H. Hazlett, his deputy; Attorneys of record for the Plaintiff, Leo T. Crowley, Alien Property Custodian of the United States:

You, and Each of You, Are Hereby Notified that Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Company, the Defendants above named, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from that certain decree made and entered in the above entitled suit by the Honorable Leon R. Yankwich, sitting as one of the Judges of the above entitled Court, on the 9th day of September, 1942; and the Defendants above named hereby appeal as afore-

said from each and every matter determined by such decree.

SAM SCHNITZER,  
HARRY J. WOLF,  
ROSE SCHNITZER and  
JENNIE WOLF,

Individually and as a co-partnership doing business under the name and style of the Alaska Junk Company.

By J. S. MIDDLETON,  
1035 Pacific Building, Portland, Oregon, Attorney for Defendants. [97]

State of Oregon,  
County of Multnomah—ss.

Service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon this 1st day of October, 1942, by receiving a copy thereof, duly certified to as such by J. S. Middleton, Attorney for Defendants.

THEODORE J. GEISLER,  
By: B. DOUGLAS,  
Sec'y.

Attorney for Plaintiff, California Corrugated Culvert Company, a corporation.

State of Oregon,  
County of Multnomah—ss.

Service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, this 1st day of October, 1942, by receiving a copy thereof,

duly certified to as such by J. S. Middleton, Attorney for Defendants.

CARL C. DONAUGH,  
JAMES H. HAZLETT,  
Attorneys for Plaintiff, Leo T. Crowley, Alien  
Property Custodian of the United States.

[Endorsed]: Filed October 1, 1942. [98]

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And Afterwards, to wit, on the 1st day of October, 1942, there was duly Filed in said Court, a Bond on Appeal, in words and figures as follows, to wit: [99]

National Surety Corporation  
New York  
Vincent Cullen  
President

[Title of District Court and Cause.]

UNDERTAKING FOR PAYMENT OF  
COSTS ON APPEAL

Whereas, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, defendants in the above entitled Court and cause, appeal to the Circuit Court of Appeals from that certain judgment heretofore, to wit, on September 9, 1942, rendered and entered in the above entitled Court and cause in favor of the plaintiffs and against the defendants.

Now, Therefore, in consideration of the premises and of such appeal, we Sam Schnitzer, Harry J.

Wolf, Rose Schnitzer, and Jennie Wolf, as Principals, and National Surety Corporation, a corporation organized and existing under the laws of the State of New York, and duly authorized to transact a surety business in the State of Oregon, as Surety, do hereby jointly and severally undertake and promise on the part of the said defendants and appellants, the said Sam Schnitzer, Harry J. Wolf, Rose Schnitzer, and Jennie Wolf, that said appellants will pay all damages, costs and disbursements which may be awarded against them on said appeal, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00).

In Witness Whereof the said Principals have caused these presents to be signed and executed, and the said Surety has caused these presents to be duly executed by its authorized Attorney-in-Fact, and its corporate seal to be hereunto affixed this 1st day of October, 1942.

S. SCHNITZER,

ROSE SCHNITZER,

H. J. WOLF,

JENNIE WOLF,

[Seal]

NATIONAL SURETY CORPORATION,

By W. B. GILHAM,

Attorney-in-Fact.

Countersigned

By BURNETT GOODWIN,

Resident Agent.

[Endorsed]: Filed October 1, 1942. [100]

And Afterwards, to wit, on the 27th day of October, 1942, there was duly Filed in said Court, a Motion for extension of time to file record on appeal, in words and figures as follows, to wit: [101]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME TO  
FILE RECORD ON APPEAL

Come now the Defendants-Appellants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer, and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Company, by J. S. Middleton, their attorney of record, and move the Court for an order extending the time within which the record of appeal shall be filed with the Circuit Court of Appeals for the Ninth Circuit to and including the 28th day of December, 1942, upon the ground and for the reason that the said record on appeal is necessarily voluminous, and that it will require said extension of time for the preparation of the transcript of the proceedings in the Trial Court and the proper preparation of the said record on appeal.

Dated this 27th day of October, 1942.

(Signed)

J. S. MIDDLETON,

Attorney for Defendants-Appellants.

[Endorsed]: Filed October 27, 1942. [102]



And Afterwards, to wit, on Tuesday, the 27th day of October, 1942, the same being the 97th Judicial day of the Regular July, 1942, Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [103]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE  
RECORD ON APPEAL

This matter coming on for hearing upon the motion of Sam Schnitzer, Harry J. Wolf, Rose Schnitzer, and Jennie Wolf, individually, as as a co-partnership doing business under the name and style of Alaska Junk Company, Defendants-Appellants in the above entitled suit, for an order extending the time within which to file the record on appeal in the above entitled Court; and

It Appearing to the Court that notice of appeal was given and filed by the Defendants-Appellants on October 1, 1942, and that the record on said appeal is voluminous, and that it will reasonably require an extension of said time to and including December 28, 1942, within which to prepare and file said record on appeal; and the Court being advised in the premises and finding said motion well taken, it is hereby

Ordered and Adjudged that the Defendant-Appellants be and they are hereby granted to and including the 28th day of December, 1942, within which to prepare and have filed with the United

States Circuit Court of Appeals for the Ninth Circuit the record on appeal in said suit.

Done in open Court this 27th day of October, 1942.

(Signed)                      CLAUDE McCOLLOCH,  
District Judge.

[Endorsed]: Filed October 27, 1942. [104]

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And Afterwards, to wit, on the 10th day of December, 1942, there was duly Filed in said Court, Appellants' Statement of Points on Appeal in words and figures as follows, to wit: [105]

[Title of District Court and Cause.]

APPELLANTS' STATEMENT OF POINTS  
ON APPEAL

Come now Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually and as a co-partnership doing business under the name and style of Alaska Junk Co., Defendants and Appellants herein, and make of record this their designation of the points upon which they intend to rely upon appeal herein as follows:

1. The trial court erred in declining to consider proof and offered proof of anticipation of the patent in suit through prior development of analogous arts, including specifically that of coupling hoses.
2. The trial court erred in holding the patent in suit, and particularly Claim 3 thereof, valid.

3. The trial court erred in finding that the Plaintiffs were not estopped, by reason of the proceedings had and taken in the Patent Office in the prosecution of the application for the letters patent in suit, from maintaining such letters patent, and particularly Claim 3 thereof, in such scope as to cover or embrace the apparatus made, used and sold by the Defendants.

4. The trial court erred in failing to find that, by reason of the construction placed by them upon the scope and extent of the claims of the patent in suit, and particularly Claim 3 thereof, the [106] Plaintiffs were estopped to assert such claims, and particularly Claim 3 thereof, in scope wide enough to hold the Defendants guilty of infringement.

5. The trial court erred in finding and decreeing that the Defendants infringed Claim 3 of the patent in suit.

Respectfully submitted,  
(Signed) J. S. MIDDLETON,  
Attorney for Defendants and  
Appellants.

[Endorsed]: Filed December 10, 1942. [107]

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And Afterwards, to wit, on the 10th day of December, 1942, there was duly Filed in said Court, Appellants' designation of contents of record on appeal in words and figures as follows, to wit: [108]

[Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL

Come now the Defendants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually and as a co-partnership doing business under the name and style of Alaska Junk Co., and make and file this their designation of the following portions of the record, proceedings and evidence to be contained in the record on appeal, to-wit:

Filing Date		Document
1. April	3, 1941	Complaint.
2. April	23, 1941	Answer.
3. July	14, 1941	Stipulation.
4. July	14, 1941	Order based on stipulation.
5. September	6, 1941	Motion of Ralph H. Pierce for authorization to intervene.
6. December	23, 1941	Order denying motion of Ralph H. Pierce.
7. August	7, 1942	Motion for order adding party plaintiff and permitting the filing of a supplemental complaint.

Filing Date		Document
8. August	10, 1942	Order authorizing substitution of party plaintiff and filing of supplemental complaint.
9. August	19, 1942	Stipulation relative to pretrial exhibits. [109]
10. August	19, 1942	Pretrial order.
11. August	26, 1942	All exhibits on file, including both documentary and physical exhibits.
12. September	1, 1942	Opinion of the Court.
13. September	8, 1942	Exceptions to proposed findings of fact and conclusions of law.
14. September	9, 1942	Findings of fact and conclusions of law.
15. September	9, 1942	Interlocutory decree.
16. October	1, 1942	Notice of appeal.
17. October	1, 1942	Bond on appeal.
18. October	27, 1942	Motion for extension of time to file record on appeal.
19. October	27, 1942	Order extending time to file record on appeal.
20. December	8, 1942	Transcript of testimony (copy).



	Filing Date	Document
21.	December , 1942	Order directing transmittal of original exhibits.
22.	December , 1942	Appellants' statement of points on appeal.
23.	December , 1942	Appellants' designation of contents of record on appeal.

Respectfully submitted,  
 (Signed) J. S. MIDDLETON,  
 Attorney for Defendants and  
 Appellants.

[Endorsed]: Filed December 10, 1942. [110]

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And Afterwards, to wit, on Thursday, the 10th day of December, 1942, the same being the 36th Judicial day of the Regular November, 1942, Term of said Court; before the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, the following proceedings were had in said cause, to wit: [111]

[Title of District Court and Cause.]

## ORDER DIRECTING TRANSMITTAL OF ORIGINAL EXHIBITS

This matter coming on for hearing upon the oral motion of J. S. Middleton, attorney for the Defendants and Appellants, Sam Schnitzer, Harry J.

Wolf, Rose Schnitzer and Jennie Wolf, individually and as a co-partnership doing business under the name and style of Alaska Junk Co., for the order of this Court directing that all of the original exhibits herein, both documentary and those not of a documentary character, be sent to the Circuit Court of Appeals of the Ninth Circuit upon appeal of this cause, and the Court being of the opinion that such motion is well taken, it is at this time:

Ordered that the Clerk of this Court shall transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit all original exhibits filed in this case, in lieu of copies of the same, to include all exhibits both documentary and non-documentary in character, and that the said original exhibits shall be a part of the transcript of record from this Court to said Appellate Court.

Dated this 10th day of December, 1942.

LEON R. YANKWICH,

Judge.

[Endorsed]: Filed December 12, 1942. [112]

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United States of America,  
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 112 inclusive, constitute the transcript of record on appeal from a decree of said Court in

a cause therein numbered Civil 706, in which California Corrugated Culvert Co., a corporation, and Leo T. Crowley, Alien Property Custodian of the United States are plaintiffs and appellees, and Sam Schnitzer, Harry J. Wolfe, Rose Schnitzer, and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co. are defendants and appellants; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed therein by appellants and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof, and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody, in accordance with the said designation.

I further certify that the cost of the foregoing transcript is \$5.00 for filing Notice of Appeal, and \$24.65 for comparing and certifying the within transcript, making a total of \$29.65 and that the same has been paid by the said appellants.

I further certify that I am transmitting with said transcript, the duplicate of the reporter's transcript filed in the Clerk's Office.

I further certify that I am transmitting to the Circuit Court of Appeals for the Ninth Circuit, pursuant to an order of the District Court of the United States for the District of Oregon, all of the original exhibits introduced as evidence at the trial

of the said cause, and listed and described in the duplicate transcript of the evidence.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 21st day of December, 1942.

[Seal]                      G. H. MARSH,  
Clerk. [113]

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## EXHIBIT "A"

### TRANSCRIPT OF PROCEEDINGS ON TRIAL OF CAUSE

This cause came on for trial before the Honorable Leon R. Yankwich, United States District Judge for the Southern District of California, assigned to sit in the United States District Court for Oregon.

Pretrial proceedings were had by and under direction of the Court prior to the trial in open court. At the pretrial proceedings all exhibits were identified and given a number, subject to being offered in evidence at the trial and subject to the ruling of the Court on admissibility.

The hearing and presentation of evidence commenced on August 19, 1942, and was concluded on August 22, 1942, and the cause was thereafter orally argued by counsel on August 24 and 25, 1942. At the commencement of the trial the Court stated that the pretrial order had been approved by him and filed.



The following counsel represented the respective parties:

James H. Hazlett, Esq., Assistant United States Attorney, appeared on behalf of plaintiff, Leo T. Crowley, Alien Property Custodian of the United States

Theodore J. Geisler, L. R. Geisler and William S. Graham, Esqs., appeared on behalf of plaintiff, California Corrugated Culvert Co., a corporation.

J. S. Middleton, Esq., appeared as attorney for the defendants.

### OPENING STATEMENTS

In opening statements for plaintiff, Mr. Graham stated that this was a patent suit for an injunction and accounting for alleged infringement of United States Letters Patent No. 1,747,942, granted on February 18, 1930, in the name of Karl Lanninger for "Pipe Line," on an application filed in the United States Patent Office on October 8, 1923, that:

"The nature of the invention is a pipe joint in connection with pipes. It comprises a sleeve having an internal groove within one end of the sleeve, and a gasket or elastic packing member mounted in that groove by means of a flange or a rim and having an extended free portion circumferentially enclosing an unthreaded pipe member, providing hinged relationship between the sleeve and the pipe member, combined with



means to hingedly secure the sleeve upon the unthreaded pipe end.”

That the action, as originally filed, included the patentee, Karl Lanninger, as a party plaintiff; that said Lanninger was an alien enemy national of Germany, and on June 18, 1942, Leo T. Crowley, Alien Property Custodian of the United States, had vested title to the patent in the Alien Property Custodian, subject to which the District Court had, on motion, entered an order substituting said Alien Property Custodian for said Lanninger; that the plaintiff, California Corrugated Culvert Co., a California corporation, was an exclusive licensee under the patent in suit, for irrigation purposes; the jurisdiction of the Court was predicated on the patent laws of the United States, and that defendants were inhabitants of and maintained an established place of business within the judicial district of the court, and were charged with acts of infringement within said district; that Claim 3 was the only claim of the patent charged to be infringed; that the charge of infringement is predicated on manufacture and sale by defendants of devices illustrated by defendants' pretrial exhibits 8 and 47 and 3 and 48.

In opening statement for the defendants, Mr. Middleton stated that the alleged infringing devices are claimed by the defendants to be dissimilar to the disclosures of the patent in suit, and are not infringements of Claim 3 thereof, for the reason that the patent in suit, and particularly Claim 3 thereof, discloses as one of the distinguishing char-

acteristics of the invention a flange packing, whereas the accused devices employ a U or V type packing, as distinguished from a flange packing. He also stated that all of the various component parts of the invention disclosed by the patent in suit are old. Further, he stated his belief that the proof would disclose that the patent in suit is but a paper patent, never reduced to practice, and that the commercial product of the plaintiff, California Corrugated Culvert Co., exemplified by Exhibit 17, is not an exemplification of the disclosures of the patent in suit, or Claim 3 thereof, but an exemplification of the disclosures of a certain patent to one R. H. Pierce, patentee; and that the defendants claim that the alleged infringing devices respond to the disclosures of the Pierce patent and not to the disclosures of the patent in suit. He further raised the issue that the plaintiff, California Corrugated Culvert Co., by its conduct in defining pipe couplers responsive to the disclosures of the Pierce patents and equipped with interior locking means as being without the scope of the disclosures of the patent in suit, is now estopped to assert as within the disclosures of the claims of the patent in suit pipe couplers such as those now accused as infringements, being couplers responding to the disclosures of the Pierce patent, and additionally equipped with locking means.

Mr. Middleton further referred generally to the other defenses set up in the answer and in the pre-trial order, stating that these would develop as the trial proceeded.

Counsel for the parties having thus defined their respective positions, trial proceeded with:

## PLAINTIFFS' EVIDENCE

### BALDWIN VALE

was thereupon produced as a witness in behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows: [24\*]

Mr. Graham: If your Honor please, before proceeding with the examination of the witness I will say that the pre-trial order stipulates title, but as a matter of form I offer in evidence as Plaintiffs' Exhibit 11 a copy of United States Letters Patent to Karl Lanninger, No. 1,747,942, granted February 18, 1930, for pipe line, on an application filed October 8, 1923, Serial No. 667,353.

The Court: It may be received.

(The copy of Patent 1,747,942, so offered, having been previously marked Pre-Trial Exhibit 11, was thereupon received in evidence as Plaintiffs' Exhibit 11.)

[Printer's Note: Plaintiffs' Exhibit No. 11 is set out in full at page 383 of this printed record.]

Mr. Graham: And as Plaintiffs' Exhibit 12 a certificate of search in the Patent Office showing at the time of the original suit that the title was still in Lanninger.

The Court: It may be received.

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\* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Baldwin Vale.)

(Said certificate of search above referred to, having been previously marked as Pre-Trial Exhibit 12, was thereupon received in evidence as Plaintiffs' Exhibit 12.)

Mr. Graham: And as Plaintiffs' Exhibit 13 a copy of license from Lanninger to the plaintiff herein, California Corrugated Culvert Company.

[25]

(Said license agreement, Lanninger to California Corrugated Culvert Company, having been previously marked as Pre-Trial Exhibit 13, so offered, was thereupon received in evidence as Plaintiffs' Exhibit 13.)

Mr. Graham: Exhibit 14, if your Honor please, which I now offer, is merely a consent from Lanninger to the plaintiff California Corrugated Culvert Company that it might proceed to use his money and bring suit.

The Court: All right.

(The copy of authorization by Karl Lanninger above referred to, so offered, having been previously marked as Pre-Trial Exhibit 14, was thereupon received in evidence as Plaintiffs' Exhibit 14.)

Mr. Graham: And as Plaintiffs' Exhibit 15 plaintiff offers merely a letter from Lanninger showing that he resided in Germany, in support of the allegation that he was a resident of Germany.

The Court: All right.



(Testimony of Baldwin Vale.)

(The letter above referred to, Lanninger to California Corrugated Culvert Company, so offered, having been previously marked as Pre-Trial Exhibit 15, was thereupon received in evidence as Plaintiffs' [26] Exhibit 15.)

The Court: This is merely an authorization to pay \$25.00 to somebody.

Mr. Graham: That is all we desire to do, to show the date of the letter. It has no relevance to the suit, but we allege in the complaint that the original applicant Lanninger was a resident of Germany, and it was denied by the defendant. That was all the proof that we had he was a resident of Germany.

The Court: Well, this letter is from Frankfurt-on-Rodelheim, dated March 14, 1941, addressed to the Corrugated Culvert Company at Berkeley, California, authorizing the payment of \$25.00 to a patent attorney named Walter S. Bleston, and to apply it to the accounting as of the date of November 28, 1940, signed "Greetings, Lanninger."

Mr. Graham: Thank you, your Honor. And as Plaintiffs' Exhibit 80 there is offered a certified copy of Vesting Order No. 27, dated June 18, 1942, of the Alien Property Custodian of the United States vesting title and all interest thereunder in the Lanninger patent in suit in the Alien Property Custodian of the United States.

The Court: All right. It may be received.



(Testimony of Baldwin Vale.)

(Said certified copy of Vesting Order No. 27, above referred to, so offered, having been previously marked as Pre-Trial Exhibit 80, was thereupon received in evidence as Plaintiffs' Exhibit 80.) [27]

Direct Examination

By Mr. Graham:

Q. Please state your name?

A. Baldwin Vale.

Q. And your address?

A. 333 Montgomery street, San Francisco.

Q. What is your occupation?

A. I am a registered patent attorney.

Q. How long have you been a registered patent attorney?

A. Well, I have been a patent attorney forty-five years. They didn't register when we first began, but I have been registered ever since they started that, in 1907 or '08, as I remember.

Q. In the course of your practice as a patent attorney have you ever prosecuted any patents for mechanical devices such as pipe joints?

A. Many of them; yes, sir.

Q. You are generally familiar with the subject?

A. Yes.

Q. What other mechanical experience have you had?

A. I have been a bench mechanic, engine tender, fireman, journeyman electrician, and then I graduated into a patent attorney.

(Testimony of Baldwin Vale.)

Q. Have you ever been in the manufacture of any mechanical devices?

A. Yes, I have owned and operated a factory for the manufacture of [28] agricultural implements in Stockton, California, and I also worked for the Holt Manufacturing Company as a superintendent of their Houser & Haynes Harvester Works in Stockton, a subsidiary, where I built plows and harvesters and any other agricultural implement that was in their line.

The Court: Other than experience you have not had any formal education in mechanics, such as a degree of mechanical engineering or the like?

A. Well, your Honor, I won't say that I have had formal schooling, but I have educated myself in it.

The Court: I mean formal schooling.

A. No.

The Court: You don't have any degree as a mechanical engineer?

A. No. Force of circumstances made that impossible.

The Court: That is all right; no criticism at all. I just wanted to know what your experience has been.

Q. (By Mr. Graham) Have you served as a witness in other courts in analyzing patents?

A. Oh, yes; since 1906. I served the Otis Elevator Company; that was the first case.

Q. Approximately how many times have you

(Testimony of Baldwin Vale.)

served as a witness in federal court analyzing patents?

A. Well, through the years, about thirty-five years, I have served off and on—perhaps not an average of once a year, but pretty close to that.

[29]

The Court: Have you appeared before any of the present judges of the Northern District of California, Judge St. Sure, Judge Roche or the late Judge Louderbach?

A. Oh, yes, in San Francisco; all of them.

The Court: You have never appeared in the Southern District of California?

A. Yes, I have been in Oregon before.

The Court: I mean the Southern District of California, Los Angeles. You haven't been in my court, have you?

A. No, I haven't been south. They have plenty of experts down there.

Mr. Graham: Now is it your Honor's practice to then permit opposing counsel to cross examine as to qualifications?

The Court: Not unless he wishes to; not unless he desires to at the present time. This is a mere foundation. Go ahead with your examination.

Q. (By Mr. Graham) Have you made a study, Mr. Vale, of the Lanninger patent, No. 1,747,942?

A. Yes, sir; I have.

Q. Will you explain to the Court what you conceive the invention disclosed thereby.

Mr. Middleton: Just a moment. If the Court

(Testimony of Baldwin Vale.)

please, I don't think that question is very well framed. I think the attention of the witness should be drawn to the various specific parts, and he may then explain the specific parts. [30]

The Court: No, he may give his opinion on the entire structure, read the specifications and explain them if they need explaining.

A. In this Lanninger patent he starts off, the first line, "This invention relates to a line of conduits". Then he states the purpose of showering and irrigating, and he refers to rubber packing cups. His particular objective seems to be a certain degree of flexibility imparted to the pipe line. He makes the salient feature of it a rigid sleeve. I can understand why at that period he thought that that was quite a contribution to the art, which it was, because I was familiar with the discharge pipes in use in marine dredging—

Mr. Middleton: Just a moment. If the Court please, I don't see—

The Court: That is rationalizing your conclusions. I limit experts very much. [31]

All we want them to do is to interpret, just like a doctor would explain technical language, interpret this to me where it needs interpretation. If the language is clear then the patent itself is clear enough. I don't need an expert to explain it to me. But to go on and explain and bring in the prior art, that is not my idea of expert testimony in the law of patents.



(Testimony of Baldwin Vale.)

I want the expert to be strictly confined to advising the Court what his opinion is, an opinion which I may entirely disregard and no court says I must follow. [32]

So I want to limit this man, who is not a scientist but merely a patent attorney, one who is not a scientist in the field, I am going to limit him purely to interpreting this patent insofar as it is mysterious to me, and I am not going to allow him to give me lectures and decide the case for me, you see.

Mr. Graham: I think the answer was probably a little bit broader than the question.

The Court: We will strike out the statement beginning with what "I can understand". We don't want any reasons or trying to find out what you think the inventor thought. What the inventor thought he puts right in the paper here. So limit yourself to interpreting this, and then if you feel that this did not exist in the prior art, why, just tell me whether in your opinion the prior art did or did not disclose that or that feature. Now with that understanding, I won't interrupt you. [33]

You may then proceed from there.

Q. (By Mr. Graham) Did the patentee Laninger describe how he accomplished the invention?

A. Very distinctly; very distinctly.

Q. With relation to flexibility of the pipes?

A. Flexibility of the pipe line, you mean?

Q. Yes.

A. Yes, he did, very distinctly.



(Testimony of Baldwin Vale.)

Q. In what way does he describe that?

A. He describes it as a rigid sleeve attached to——

The Court: Mr. Vale, you see I have the paper patent, and if you indicate the column and line then I can follow you. Have you the patent in front of you? [35]

A. Take Figure 1, for instance. The "a" represents a rigid sleeve to which a pipe end "c" is affixed, in this case by threading. This rigid sleeve "a" has an extension "a<sub>1</sub>", or lug, and then telescoping into the end of the sleeve at "a<sub>4</sub>" is an unthreaded pipe end of considerably less diameter than the end "a<sub>4</sub>". This unthreaded pipe end has an eye, "c<sub>1</sub>", which slides into the lug "a<sub>1</sub>", and and there is a transverse hole to receive the cotter pin "d", which very loosely fits the holes both in the eye, "c<sub>1</sub>", and in the lug "a<sub>1</sub>". This permits a free swinging of the unthreaded end of the pipe within the end of the sleeve into which it is telescoped. Interposed between the interior of the sleeve "a" and the unthreaded pipe end is a packing element having a free cylindrical flange "b". That shows in Figure 3. That has what Lanninger calls a flange "b<sub>2</sub>" extending up into an annular groove marked "e" in Figure 1. When the unthreaded pipe end is forced into the packing member "b" it expands flange "b<sub>2</sub>" up into the groove "e", making a pressure tight seal within the sleeve and contacting the unthreaded end of the pipe. The

(Testimony of Baldwin Vale.)

resilient ele- [36] ment, the packing, provides for elasticity to permit the hinged action of the two pipe ends "c" relative to each other. Then he provides a means which is identified as "a<sub>1</sub>", "c<sub>1</sub>" and "d" for hingedly securing said sleeve on the pipe having the unthreaded end. It is noticeable in the drawing and also in the exhibit model that the hinged action is very loose, and it does not determine the angularity of the two pipes, but merely follows. It is a link to prevent longitudinal separation of these pipe ends. It is not intended to hinge the two together but to prevent them from separating.

Q. What is the relation of the pipes as to their axial alignment?

A. In the drawing there is not true axial alignment, but there is a freedom of motion admitted by the packing member and limited only by the clearance between the inner diameter of the sleeve and the outer diameter of the unthreaded pipe end.

Q. Would that description which you have just given read on each figure of the drawing of the Lanninger patent?

A. That reads particularly on figure 1.

Q. Would it read on any other figure?

A. Yes, it would read on practically all of them; in fact, on all of them, especially on Figure 3, in the side outlet, which has an internal groove in the sleeve enclosing and encircling the free end of the pipe. It applies in Figure 4, in which here we

(Testimony of Baldwin Vale.)

have a double ended sleeve with free pipe ends in each [37] end of the sleeve telescoped therein with freedom of movement laterally relative to the axis of the sleeve.

Q. Is there any modification of that structure shown in Figure 3?

A. The modification in Figure 3 is that the part that is marked "a<sub>1</sub>" in Figure 1 is screwed on to the end of the sleeve to abut the opposite sides of the flange "b<sub>2</sub>" on the packing element.

Q. Now referring to Figure 1 and also Figure 4, as well as the side outlet in Figure 3, how is that flange maintained in that groove?

A. It is frictionally retained.

Q. That is, I am speaking now of the flange of the elastic packing member "e".

A. The flange is "b<sub>2</sub>"; the groove is "e".

Q. Well, the flange "b<sub>2</sub>" in the groove "e".

A. It is a fit. The resiliency of the packing element, which is of rubber compound, can be deformed so that the flange will enter that internal groove "e" and be retained by frictional engagement with the walls of that groove. I might add that it is further retained in the groove by the expansion of the packing incidental to forcing the larger diameter of the unthreaded pipe end into the smaller diameter of the cylindrical portion of the packing.

The Court: But in all these figures, Mr. Vale, both 1, 3 and 4, there is a space left between—what do you call this [38 ] here?

A. The sleeve.

(Testimony of Baldwin Vale.)

The Court: —the sleeve and the pipe, the sleeve below the flange, you see. A. Yes.

The Court: And the model before me would indicate that that method of construction is contracting the opening on the top part which has the flange in it, the smaller opening, which would almost result, assuming a straight pipe, in a space always being there? A. Yes.

The Court: And the only thing that really fits tight is the flange; is that correct?

A. Well, the flange will fit tight in the groove “e”.

The Court: In the groove.

A. But the elasticity of that packing when the larger pipe is forced into the smaller opening in the packing, it expands the packing and stretches it tighter around the end of the pipe.

The Court: Yes, that is right.

A. Contracts, actually; contracts on the end of the pipe.

The Court: So there is—you really get a rigid connection, but because the rigid connection is formed by flexible material it retains certain flexibility; is that correct?

A. Oh, yes. At all times, in fact—I don’t like to use the word “rigid” there, because the rubber, in fact, becomes elastic. [39]

The Court: I see.

A. It is always elastic and always permits a hinged action.

The Court: I see. Well, all right, to use your own words. In other words, if you take—I don’t



(Testimony of Baldwin Vale.)

know how long these pipes are, irrigation pipes—I have lived in the irrigated country in California, and most of our irrigation is done by ditches—but I assume the pipe lengths are what—ten or twelve feet?

Mr. Graham: Approximately twenty feet.

The Court: Twenty feet. I presume the result would be that if you picked up one length of pipe which had been attached to another and wanted to move it away the coupling would give just enough that there would be no danger of breaking there.

A. Well, he would first withdraw the end of the pipe from the coupling and then pick it up. It would be free then. He would pick up twenty feet of pipe with a sleeve on one end. If your Honor would permit I would like to demonstrate with one of these.

The Court: That is perfectly all right. As you speak, give the exhibit numbers.

A. Well, almost any of them. Defendants' No. 48-B——

Mr. Graham: 48 that is.

A. All right. There is a "B" on here. I don't know what it means. Your Honor will notice that the flexing of the pipe is entirely due to the elasticity of the packing. Now this latch—— [40]

The Court: Isn't that coupled also with that looseness because of the space that is left, regardless of that?

A. Yes.

The Court: If you take the rubber out and put that in there it would still move?

A. That is what I wanted to show.



(Testimony of Baldwin Vale.)

The Court: Because you have a smaller and a larger pipe.

A. The possible angulation of the pipe relative to this end of the sleeve.

The Court: Yes.

A. Now the rubber does not diminish that in any way.

The Court: No.

A. Nor does any latch determine the angularity of movement. It keeps it from falling apart.

The Court: It still keeps them together.

A. He didn't say "hinged together" in the claim. He said "hingedly secure". And when the pressure goes on that is the effect (illustrating). When the pressure is off you can unlatch it, pull it out.

The Court: I see.

A. So that there is a distinct difference between the hinging of the pipe together—that is, securing them hingedly is not limited in any sense by the latch. The latch does not determine the angle of deviation.

The Court: All right. [41]

Q. (By Mr. Graham) Is there any particular form or shape of gasket that is essential and necessary to meet the invention disclosed in the Lanninger patent?

Mr. Middleton: Now just a moment. If the Court please, that calls for the witness' conclusion on the very thing that the Court must determine.

The Court: No, he may give his opinion as to whether it calls for any particular type of construction; whether the embodiment as exemplified by Fig-

(Testimony of Baldwin Vale.)

ures 1, 3 and 4 is merely one form or whether you can do it in other ways, and illustrated by reference to the specifications.

Mr. Middleton: But only in the light of the claim, your Honor.

The Court: What?

Mr. Middleton: Only in the light of the claim language.

The Court: That is true.

Mr. Middleton: You see, the question does not limit——

The Court: The drawings and specifications may not alter the claim, but they may be used in pointing out the meaning of the claim.

Mr. Middleton: That is true, your Honor, but the claim is the basis.

The Court: That may be true, but the whole patent must be read as a whole, and unless the claim is limited by the description the patentee is entitled to the benefit of his speci- [42] fications. They cannot change his claim but they may explain it where it is not plain on its face.

Mr. Middleton: That is just the point here, your Honor; that everywhere there is the word “flange” in the complaint and in the specifications.

Mr. Graham: I will withdraw the question, if your Honor please.

The Court: All right.

Q. (By Mr. Graham) What in your opinion, Mr. Vale, is meant by the flange “b<sub>2</sub>”?

A. That is a rim extending around the cylindri-

(Testimony of Baldwin Vale.)

cal part of the packing, a protrusion beyond the periphery of the packing, for the purpose of anchoring that packing within the sleeve.

Q. What do you mean by anchoring it in the sleeve?

A. Well, Lanninger says "frictionally retained". In other words, there are no screws through it or mechanical means to hold it in there because it cannot possibly get out.

Q. And that forwardly extending part marked "b" which encloses the unthreaded pipe end, is that fixed in relationship like the flange that you spoke of?

A. No, that is free of the sleeve, and it is frictionally fixed on the outer periphery of the unthreaded pipe end. It is perfectly free with respect to the sleeve because of the resilience of the packing, the packing acting as a hinge element.

Q. Does the flanged portion move with the relative movement of [43] the axis of the pipe?

A. No, sir; that is fixed in the groove.

Q. Does the free cylindrical portion move with the relative movement of the pipe?

A. It does. Now I assume that you do not want to go into the fine distinctions of molecular movement in rubber. Rubber may flow or it may expand or contract or displace.

The Court: He is not limiting himself to rubber. That is why it would not be material, because he said that any flexible material would do. He used rubber, but he may have had to substitute something else.

(Testimony of Baldwin Vale.)

A. Well, it could be leather or fabrics. There are a number of things——

The Court: It could be anything that gives.

A. That is right.

The Court: So he says.

A. He says “frictionally retained”. In other words, it is wedged up in there and the connection of the wedge is frictional.

Q. (Mr. Graham) Now referring to Claim 3 in the patent do you find in the disclosure of the Laninger patent a pipe joint in connection with pipes one of which has an unthreaded end?

A. Will you read the first part of the question?

(Last question read.) [44]

A. Yes. He says, “A pipe joint in connection with pipes one of which has an unthreaded end”. That is in Claim 3.

Q. And you find that——

The Court: Point it out. He wants to find it. Point it out in the specifications or as shown in the drawings.

A. You want me to point out in the drawing——

Q. (By Mr. Graham) I want you to point out in the drawing if you find that element in the drawings or in the specifications.

A. Yes. There are two pipes in Figure 1 joined by a joint, one of which has an unthreaded end.

Q. Do you find in the drawings and in the specifications a rigid coupling sleeve for coupling said pipes?



(Testimony of Baldwin Vale.)

A. Yes; the rigid coupling sleeve is identified as "a" in the drawings, Figure 1.

Q. Does the unthreaded end of the pipe extend into that sleeve?

A. It does.

Q. Do you find in the drawings that the sleeve has an internal annular groove in the inner surface?

A. It has. It has the groove "e".

Q. Do you find a packing of elastic material in said coupling sleeve?

A. I do. That would be the part "e" and "b".

Q. Do you find such an elastic packing member consisting of a free cylindrical part frictionally enclosing the unthreaded pipe end? [45]

A. I do. That would be the part "b" that is stretched around the unthreaded pipe end in Figure 1.

Q. Do you find that the packing of elastic material has a flange frictionally retained in the groove of said sleeve?

A. Yes. That would be the flange "b<sub>2</sub>" frictionally retained in the groove.

Q. Do you find means for hingedly securing said sleeve on the pipe having the unthreaded end?

A. Yes, sir. That would be in Figure 1, the lug "a<sub>1</sub>", the eye "c<sub>1</sub>", on the unthreaded end, both of which have registering poles therethrough to receive the pin "d".

Q. In connection with the packing of elastic material in the coupling sleeve what is the function of



(Testimony of Baldwin Vale.)

the flanged rim which is retained in the groove in the sleeve?

A. The function of that flanged "b<sub>2</sub>" is to anchor the packing within the sleeve and also to pack the groove "e" against leak- [46] age.

Q. What is the function of the free cylindrical portion of the packing member?

A. The free cylindrical portion "b" packs against the outside of the unthreaded end to prevent leakage at that point. In other words, the pressure is held against leakage, either under the packing member or around the packing member with respect to the pipe and the sleeve.

Q. Does the sealing effect of the rim and the free cylindrical portion of the packing member in any way affect the hinged relationship of the pipes?

A. No. It is flexible enough to permit that fully without interference.

Q. In the operation of such a joint what advantage would that accomplish?

A. It would permit a pipe line to adjust itself to the contour of the ground and also to bend around curves on the flat plane.

Q. Now does the securing means which you said was split into the three portions, "a<sub>1</sub>", "c<sub>1</sub>" and "d", interfere in any way with the flexibility of the joint?

A. None whatever. It allows their respective attached ends, either the sleeve or the unthreaded end, perfect freedom of movement.

Q. I am referring——

A. I might add to that perfect freedom of move-

(Testimony of Baldwin Vale.)

ment except [47] longitudinally. The function of that “hingedly secured” is to prevent the longitudinal separation of the pipe ends, but otherwise there is perfect freedom of movement hingedly.

Q. What would that securing means accomplish with relation to the longitudinal movement?

A. It prevents a longitudinal separation of the pipe ends in the pipe line.

Q. Why is it necessary to prevent longitudinal separation?

A. Well, it will blow apart by the pressure exerted within the pipe line.

Q. Does pressure exerted within the pipe line have any effect on the elastic packing member?

A. It forces them more tightly against the surfaces that they are supposed to pack, the cylindrical portion around the pipe and the flanged portion “b<sub>2</sub>” within the groove.

Q. Now referring to Defendants’ Exhibit 47—may he take that exhibit, if your Honor please?

The Court: Yes. He has it, hasn’t he?

The Witness: Yes, I have it.

Mr. Graham: I believe counsel have agreed—I don’t know just what the position of the Court will be with respect to it, but this exhibit has been offered on pre-trial and it is admitted by the pre-trial proceedings that there has been manufacture of this device by the defendants in a modified form, and such manufacture is defined in the pre-trial order. I [48] wish to have the witness testify relative to this ex-

(Testimony of Baldwin Vale.)

hibit and still have it in evidence as defendants' exhibit.

The Court: You are not adopting it by merely using it for the purpose of demonstrating. I presume you want to demonstrate some similarity between it and the device similar in structure. You do not adopt it as your exhibit. Of course in this pre-trial method of putting in the exhibits you have the advantage of knowing what the other person's exhibits are. But you are not making any admission against your interest by using a device they furnished you.

Q. (By Mr. Graham) Referring to Defendants' Exhibit 47, do you find therein a pipe joint in connection with pipes one of which has an unthreaded end? A. Yes, sir.

Q. Which member is that?

A. That is the member 47-A has an unthreaded end.

Q. Do you find a rigid coupling sleeve for coupling said pipes into which said unthreaded end extends? A. I do; yes, sir.

Q. Has the sleeve an internal annular groove in its inner surface? A. It has.

Mr. Graham: May I ask your Honor if you desire him to mark these parts with a pencil as we go along?

The Court: I don't think it is necessary, because they are [49] visible or palpable through the teaching.

Mr. Graham: It seems to me it is so apparent it is not necessary to mark them.

(Testimony of Baldwin Vale.)

The Court: Yes, you don't have to mark them.

Q. (By Mr. Graham) Is there in that exhibit a packing of elastic material in the coupling sleeve consisting of a free cylindrical part frictionally enclosing the unthreaded pipe end? A. Yes.

Q. And does the packing of elastic material have a flange frictionally retained in the groove of said sleeve? A. It has.

Q. Is there means for hingedly securing said sleeve on the pipe having the unthreaded end?

A. There is. This is this hook or eye member.

Q. What does that hook do with relation to the rigid sleeve?

A. There is a gap in the flange of the end of the rigid sleeve into which this eye hook enters, and when this hook enters that recess or gap and the unthreaded pipe end is turned laterally then that hook engages the flanges on the outer end of the sleeve to secure the sleeve to the unthreaded end.

Q. When in that relationship that you have just described is there a hinged relationship between the unthreaded pipe end and the sleeve member?

A. There is. There is the prevention of the longitudinal movement to separate the pipe ends, but there is no interfer- [50] ence with the normal rotation of lateral angularity of one pipe toward the axis of the other. It is just as free when that hook is engaged as it is when the hook is not engaged.

Q. Have you examined the flexible elastic member within the sleeve in Exhibit 47? A. I have.



(Testimony of Baldwin Vale.)

Q. Will you please describe its function or its mode of operation.

A. The function of the cylindrical portion, this free cylindrical portion, in that it is not attached to any other part, is to contract by natural contraction of rubber in adjusting itself over a larger diameter than the diameter of the cylindrical portion to hug the end of the pipe by just natural contraction and friction.

Q. What is the operation of the rim around that elastic packing member?

A. The rim, which is a continuation of the cylindrical portion through its inherent body—that is, it is a homogeneous compound—is to fit within the groove, within the annular groove within the interior of the sleeve, the rigid sleeve.

Q. How is it held in there?

A. Frictionally.

Q. Is there any other means for holding it in there?

A. No, nothing except that its diameter and shape perfectly fits the inner diameter and shape of the groove in the sleeve. [51]

The Court: Doesn't it fit over the sleeve rather than fit into a groove, the way this patent teaches?

A. No. The patent teaches a groove in the sleeve, an interior groove.

The Court: Yes, but I mean the manner in which the rubber or what element do you call that?

A. The packing.



(Testimony of Baldwin Vale.)

The Court: The packing "frictionally enclosing the unthreaded pipe end".

A. The dictionary definition shows this to be a flange fitting within the groove. The groove is semi-circular and this is substantially semicircular.

The Court: Doesn't it fit over the end of the pipe?

A. It fits over the end of this pipe, as I just demonstrated.

The Court: Yes.

A. That fits snugly down over it to the extent that it contracts the rubber.

The Court: I see now.

A. This has to be assembled first. That is, the rubber packing has to be assembled first into the sleeve with the flange extending into the groove of the sleeve and the cylindrical portion pointing away from the entrance to the sleeve, so that when this unthreaded end is pushed in there is no resistance except the frictional resistance of the cylindrical portion.

The Court: All right. [52]

Q. (By Mr. Graham) Does it operate in the same manner and with the same function or mechanical force as the elastic packing member in the Lanninger patent?

A. Definitely, yes.

Q. Does that elastic packing member in Exhibit 47 normally remain in the sleeve?

A. At all times unless it is manually removed by intention.

(Testimony of Baldwin Vale.)

Q. Does it at any time become a portion slid over or enclosing the unthreaded pipe end when the pipe end is not inserted in the sleeve?

A. Well, no. The cylindrical portion then is free. It is standing on its own. It has no function to perform at that condition until the pipe end goes in.

Q. Is it a separable part of the sleeve itself and normally retained in the sleeve?

A. It is normally retained in the sleeve. It is part of the sleeve assembly.

Q. What would you say as to the sealing effect of that elastic packing member in Exhibit 47?

A. Presuming it to be a water pipe, it prevents leakage of water at that joint where it is sealed, the joint being sealed by that packing member. The function of the packing member is to seal the packing member against leakage—that is, to seal the sleeve against leakage between the packing member and the sleeve and against the tube to prevent leakage between the pack- [53] ing member and the tube. In other words, it is a seal in two places.

Q. Which portion of the elastic packing member makes the seal against the sleeve member?

A. The flange.

Q. By “the flange” which portion do you mean?

A. I mean the flange extended beyond the cylindrical portion up into the groove.

Q. What portion of the elastic packing member makes the seal against the unthreaded pipe end?

A. The cylindrical portion.

(Testimony of Baldwin Vale.)

Q. Is that cylindrical portion a free cylindrical portion?

A. A free cylindrical portion; yes, sir.

Q. Does the elastic packing member operate in the same manner as the elastic packing member in the Lanninger patent?      A. Exactly.

Q. Referring to Exhibit 48 of defendants, will you please examine that exhibit. You have previously seen and examined that exhibit?

A. I have, Exhibit 48, defendants'.

Q. Do you find therein a pipe joint in connection with pipes one of which has an unthreaded end?

A. Yes.

Q. Which is the unthreaded end?

A. The unthreaded end is the free length of pipe with a block [54] welded on to it.

Q. Do you find a rigid coupling sleeve for coupling said pipes?

A. I do. That is this fabricated end with various convolutions on it and flanges.

Q. You are identifying a member having——

A. Having a latch riveted on it.

Q. ——one end enlarged in diameter?

A. That is it; substantially bell-shaped.

Q. Are the parts adapted to fit together so that the sleeve receives one end of the unthreaded pipe?

A. They do.

Q. And it extends thereunto?

A. Yes; no rubber in that.

Q. Do you find that the sleeve has an interior annular groove in the inner surface?

(Testimony of Baldwin Vale.)

A. It is substantially semicircular in cross section.

Q. And does the joint have a packing of elastic material in the coupling sleeve?

A. It does.

Q. And of what does the packing of elastic material consist?

A. It is a rubber member having a free cylindrical portion with a flange extending up into the groove in the sleeve.

Q. How is it retained in the groove?

A. It is retained in there frictionally by its size and natural adhesion or frictional contact with the interior of the grove. [55]

Q. Do you find means for hingedly securing the sleeve on the pipe having the unthreaded end?

A. I do.

Q. What does that consist of?

A. That consists of—when the unthreaded pipe end is telescoped within the sleeve and within the packing member I find a latch on the sleeve member adapted to engage an undercut block having a substantially square eye portion which is welded to the unthreaded end of the pipe a distance back from the extreme end thereof, and I find that this latch drops down into engagement with this block, and that prevents the longitudinal separation of the pipe ends or withdrawal of the unthreaded end from the packing member.

Q. What do you mean by “that prevents”?



(Testimony of Baldwin Vale.)

A. This hinged connection here prevents the lateral—or to put it positively, it securely retains or connects the two pipe ends together so that they cannot separate, and still leaves a freedom of movement in angularity regarding the axis of the pipe line.

Q. Now when the latch is unhooked is there any hinged relationship between the pipes?

A. There is freedom of movement determined only by the difference in diameter of the unthreaded pipe end and the interior diameter of the sleeve. There is perfect freedom of movement without the latch engaged. [56]

Q. Does the latch add anything to the hinged movements of the two portions of pipe relatively?

A. No, it neither adds to nor takes away from the freedom of movement between the pipe ends with respect to the packing member.

Q. Does the latch member that you refer to operate in the same manner as the member of the Lanninger patent which extends from the sleeve outwardly in the nature of an arm numbered “a<sub>1</sub>”?

A. That is it. That is there.

Q. And what member would that correspond to in Exhibit 48?

A. That would be the latch and its pivot as attached to the sleeve member.

Q. And is there any portion in that latch device that would correspond to the member “c<sub>1</sub>” in the Lanninger patent, which has a dog member or lug on the free end of the pipe?



(Testimony of Baldwin Vale.)

A. Yes. That is what Lanninger calls the eye, is it not?

Q. Yes. A. The eye, "c<sub>1</sub>".

Q. What portion is that in the device of Exhibit 48?

A. That would be this square block with the notch in it, that notch corresponding to the eye in which is the hook—the eye is undercut and the hook hooks into it. It is a hook and eye, in other words.

Q. Have you any member or element in that Exhibit 48 which corresponds with the cotter pin "d" in the Lanninger patent? [57]

A. Yes, there is really two elements that correspond. The engagement of the hook with the eye here allows a freedom of rotation and angularity of the unthreaded end, and the pivot of the hook as attached to the sleeve permits a freedom of movement up and down but not laterally. This can go up and down but it cannot go laterally, so the lateral movement is taken up in the hook and eye engagement which corresponds to "d" in Lanninger for hingedly securing these members together.

Q. Is there any description in the Lanninger patent of an easy play or easy movement or ample play?

A. He says in line 26, "a certain degree of flexibility is imparted to the pipe line."

Q. Now read at Column 2, lines 69, 70 and following.

(Testimony of Baldwin Vale.)

A. He says, "The easy movement of the hinge "c<sub>1</sub>", "a<sub>1</sub>" and the ample play of the cotter pin in the borings of the hinge further increase the flexibility of the joint of the pipes and the facility of this joint to adapt itself to the irregularities of the ground and the available space."

Q. Would that Exhibit 48 operate in that manner?

A. Exactly. It can adjust itself to irregularities in the ground. For instance, in going up a grade or in coming down a grade or on the level plane it can adjust itself to a lateral bending of the pipe. In other words, there is universal movement there within the limitations of these two diameters.

Q. Does the elastic packing member in the device in Exhibit 48 [58] operate in the same manner as the elastic packing member in Defendants' Exhibit 47?

A. It does. They both follow the movements of the pipes relative to each other, regardless of the latch and regardless of the packing member. The packing member follows the movement of the pipes relative to each other. The securing member does the same.

Q. Is the sealing function of the gasket the same in Exhibit 48 as it is in 47?      A. Yes.

Q. Is the retention in an annular groove internally of the pipe the same as it was in 47?

A. Yes—internally of the sleeve.

Q. Internally of the sleeve?      A. Yes.

Mr. Graham: That is the plaintiffs' prima facie case, if your Honor please.

(Testimony of Baldwin Vale.)

The Court: We will take our adjournment before we start the cross examination of Mr. Vale.

(Thereupon an adjournment was taken until tomorrow, Thursday, August 20, 1942, 10:00 o'clock A. M.)

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Thursday, August 20, 1942, Court convened at 10:00 o'clock A. M., pursuant to adjournment, and thereupon proceedings were had as follows:

The Court: I think the direct examination of Mr. Vale had been completed.

Mr. Graham: If your Honor please, there are just some exhibits to offer. I now offer Plaintiffs' Exhibit 69 as illustrative of the testimony of the witness Vale, showing drawings of figures 1 and 4 of Lanninger Patent and Defendants' Exhibits 47 and 48 and the relation to Claim 3 thereto.

The Court: All right. They may be received.

Mr. Middleton: Just a moment. If the Court please, there is an objection to the exhibit as to the attempted application to the drawings of Exhibits 47 and 48 of the numerals responding to the numerals shown at Figures 1 and 4 of the Lanninger patent. As to the drawings themselves there is no objection, but the application of the numerals as attempted to be shown on the exhibit is objected to.

Mr. Graham: Then I will ask Mr. Vale, when he takes the stand, to identify the exhibit. Mr. Vale, will you take the stand.

## BALDWIN VALE,

a witness produced in behalf of the plaintiffs herein, thereupon resumed the stand and was further [60] examined and testified as follows:

## Direct Examination (Continued)

By Mr. Graham:

Q. Mr. Vale, have you examined Plaintiffs' Exhibit 69? A. I have, sir.

Q. Have you read the legend on there purporting to be a copy of Claim 3 of the Lanninger patent in suit? A. Yes, sir.

Q. Is that exhibit illustrative of your testimony that you gave here in this cause? A. I think so.

Q. Is it or is it not? A. It is.

Mr. Graham: The exhibit is offered in evidence formally.

The Court: Now this is merely offered as this witness' comparisons and the enlargement of the figures—what figures are those?

Mr. Graham: Figures 1 and 4.

The Court: —1 and 4 and the references to the claim; is that correct?

Mr. Graham: The references to the claim.

The Court: This is merely what I usually call an illustrative exhibit, the accuracy of which you don't have to concede. It is merely what he thinks the claims as applied to the structure mean. I have had them juxtaposed one upon the other [61] and give me big maps. You don't have to concede the accuracy at all. It is just as an illustration.



(Testimony of Baldwin Vale.)

Mr. Middleton: As an illustration there is no objection.

The Court: All right. It may be received and retain the same number.

(Said drawing of Figures 1 and 4 of Lanninger Patent, etc., above referred to, so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 69, was thereupon received in evidence as Plaintiffs' Exhibit 69.)

Mr. Graham: Plaintiffs offer in evidence Plaintiffs' Exhibit 70, which is a model on your desk, and I will ask the bailiff to hand it to the witness.

Mr. Middleton: To that offer, your Honor, there is no objection.

The Court: That is Exhibit 70?

Mr. Graham: That is 70.

The Court: All right. It may be received.

Q. (By Mr. Graham) Mr. Vale, have you examined Plaintiffs' Exhibit 70? A. I have, sir.

Q. Have you compared it with Figure 1 of the Lanninger patent in suit?

A. Yes, it is in accordance with Figure 1 of the Lanninger patent. [62]

Mr. Graham: The exhibit is offered in evidence formally.

The Court: All right. It may be received.

(Said model of Figure 1 of drawings of Lanninger Patent in suit, so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 70, was thereupon received in evidence as Plaintiffs' Exhibit 70.)



(Testimony of Baldwin Vale.)

Mr. Graham: Plaintiff offers in evidence Defendants' Exhibit 47 which is upon your Honor's desk.

Q. That is an exhibit relative to which you testified yesterday?      A. Correct.

Mr. Graham: Your Honor may wonder why we did not show the manufacture and sale by the defendants in this cause of Exhibits 47 and 48, but that is stipulated in the pre-trial order.

The Court: Yes, I understand.

Mr. Graham: Do you desire that we read that stipulation into the record?

The Court: No. The stipulation takes the place of proof. You call my attention to the contents and that is sufficient. A stipulation is part of the proof, so it does not need to be read. The pre-trial order having been signed by the Court, we start from there and any admission there or stipulation, why, has its regular effect.

Mr. Graham: I make this motion for the admission of the exhibit subject to a reservation to the statements of counsel [63] in producing these exhibits wherein he stated that they correspond with Pierce Patent No. 1,945,293.

The Court: Well, I think that is not a part of the stipulation. As I intimated before, I can't see the materiality of the Pierce angle of the lawsuit as yet. Of course, sometimes it is contended in a lawsuit of this character that a certain accused device is constructed according to the teachings of another patent, but that is unimportant. If it infringes it

(Testimony of Baldwin Vale.)

doesn't make any difference what other patent it follows.

Mr. Graham: I merely make the reservation as to the remarks of counsel.

The Court: All right. You don't need to accept any remarks unless it be a stipulation. You may accept only the portion which is offered without modification. All right. It may be received.

Mr. Graham: May this Exhibit 47 be received?

The Court: It will be received in evidence.

(Said model of pipe coupler above referred to, consisting of two parts, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 47-A and 47-B, was thereupon received in evidence as Plaintiffs' Exhibit 47-A and 47-B, respectively.)

Mr. Graham: On the same basis I offer Defendants' Exhibit 48, about which the witness testified yesterday. [64]

The Court: All right; it may be received.

(Said model of pipe coupling referred to, consisting of three parts, so offered, having been previously marked Defendants' Pre-Trial Exhibit 48-A, 48-B and 48-C, was thereupon received in evidence as Plaintiffs' Exhibit 48-A, 48-B and 48-C, respectively.)

Mr. Graham: I also offer Defendants' Exhibit 8 as being similar to Defendants' Exhibit 47.

The Court: Exhibit 8 is not here in this group, is it?

(Testimony of Baldwin Vale.)

Mr. Graham: I am offering it now.

The Court: Oh, you have it in your hand. All right. Exhibit 8 will be received in evidence.

(The model above referred to, so offered, having been previously marked Defendants' Exhibit 8 in the deposition of Launcelot W. Hanson on file herein, was thereupon marked received as Plaintiffs' Exhibit 8.)

Mr. Graham: I also offer in evidence Defendants' Exhibit 3, which is similar to Defendants' Exhibit 48 which was previously offered.

The Court: All right. It may be received.

(The model above referred to, so offered, having been previously marked Defendants' Exhibit 3 in the deposition of Launcelot W. Hanson on file here- [65] in, was received in evidence as Plaintiffs' Exhibit 3.)

Mr. Graham: I offer in evidence Plaintiffs' Exhibit 96, being page 876 of Knight's American Mechanical Dictionary. As I understand, it is just offered for the convenience of the Court, because I presume it would always be acceptable——

The Court: Is that a publication?

Mr. Graham: That is a standard publication, Knight's Mechanical Dictionary. I offer it, your Honor, for a definition.

The Court: All right. It may be received.

(Photostatic copy of page 876 of Knight's American Mechanical Dictionary, so offered, having been theretofore marked Defendants'

(Testimony of Baldwin Vale.)

Pre-Trial Exhibit 96, was thereupon received in evidence as Plaintiffs' Exhibit 96.)

Mr. Graham: Plaintiff offers as Plaintiffs' Exhibit 17 the commercial device of plaintiff which was to be manufactured and sold under the Lanninger patent, but the defendant reserves the objection that it is not according to the Lanninger patent.

Mr. Middleton: With that reservation, your Honor, there is no objection.

The Court: Well, the reservation is not an objection to the admissibility; merely that you do not concede that it is constructed according to the teachings of the patent. That [66] is all. It may be received.

(The pipe coupling parts above referred to, so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 17, was received in evidence as Plaintiffs' Exhibit 17.)

Mr. Graham: Plaintiff offers as Plaintiffs' Exhibit 59 a drawing of plaintiffs' commercial device of Exhibit 17, subject to the same reservations.

The Court: All right. It may be received.

(Said drawing of longitudinal section and plan view of Exhibit 17, so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 59, was received in evidence as Plaintiffs' Exhibit 59.)

Mr. Graham: That is all. You may cross examine.



(Testimony of Baldwin Vale.)

Cross Examination

By Mr. Middleton:

Q. Mr. Vale, yesterday you discussed the word "hingedly" in your analysis of the patent claims and in your discussion of the physical exhibits. Can you define for us the word "hinge", your conception of the definition?

A. Hinge is a very broad term, and I was guided by Knight's Mechanical Dictionary in what I said yesterday. It varies all the way from the cobweb hinge of a spider clear up to the modern butt hinges. [67]

Q. Do you then say that your definition of a hinge is that embodied in Knight's Mechanical Dictionary?

A. I did not define a hinge yesterday. I defined hingedly.

Q. Yes. I am asking now for your definition of a hinge so that we may reach the other.

A. Well, a hinge is a connection between two bodies movable relative to each other, or one body movable relative to a fixed body, like the jamb of a door. The hinge might be a piece of leather, or it might be a piece of metal; it may be mechanical like a butt hinge. It is still a hinge.

Q Is it your conception of a hinge that the two bodies must be joined permanently by the hinge or is that connection subject to severance in use?

A. That depends on the structure of the hinge. They could be separable.



(Testimony of Baldwin Vale.)

The Court: "Hingedly" would be more like in the manner of a hinge.

Mr. Middleton: That is true, your Honor.

The Court: If you had a piece of leather serving as a hinge, the way they used to do in the old fashioned construction of trunks and household boxes, why, it would bend over. If you make it of metal you have to have a rotator and an axis. If you connect two hose with a string or a metal loop you would have a connection made hingedly, or if you take three loops of wire and attach one to the top of a box and one to the body and connect the two you would have them connected [68] hingedly, although that would not be called a hinge. It serves as a hinge. So I don't think "hingedly" there is synonymous with the adverb or the adjective of the noun "hinge". It would mean more like in the manner of a hinge, so that I think strictly speaking hinges might be hingedly connected, or——

Q. (By Mr. Middleton) Another question along the same line, Mr. Vale. Is it your conception that a hinge operates in one plane or in more than one plane?

A. More than one plane. I would consider my hand were hingedly connected to my arm, capable of movement almost universally.

Q. Then you would say that a hinge might in some instances be synonymous with a universal joint?

A. Well, a universal joint is a broad term also,

(Testimony of Baldwin Vale.)

but a hinge is not necessarily confined to one plane that is hingedly secured.

The Court: In other words, it might be so loose as to turn sideways? A. That is it.

The Court: And the illustration I gave where you had three loops of a chain and attached them to, say, a top of a box, it would move sideways as well as back and forth and up and down.

A. It is a poor hinge, but it is——

The Court: It is a poor hinge, but it is hingedly connected.

A. As it is in Lanninger, it is a poor hinge, but nevertheless the two parts are hingedly connected together with universal [69] movement just like my wrist.

Q. (By Mr. Middleton) Now you referred in your testimony to the word “latch” in connection with Exhibit 47. What definition do you import to the word “latch”?

A. A latch is also a very broad term; in fact, it is generic. It runs all the way from a loop in a rope in which another loop can be secured up to the almost infinite variety of door latches and catches.

Q. Do you say, then, that a latch is also synonymous with a hinge in the ordinary sense in which we are using the word “hinge”?

A. A gate hinge could be used as a latch by removing the pin, disconnecting one part from the other.

(Testimony of Baldwin Vale.)

Q. So that in your mind the difference would be the removal of one part?

A. Well, if you want to separate the parts, but they are hingedly secured in the operative condition.

Q. But as to the latch, your distinction there from the word "hinge" in the broad sense in which we are using it would be that the hinge is connected in some manner and the latch is not necessarily connected; is that true?

A. Well, a hinge is disconnectible if you want to so make it; a latch is disconnectible, and yet they tend in both instances to secure two bodies in a relative condition of security.

Q. But in the instant case you make the words "latch" and the [70] "hinged means" synonymous things?

A. Well, they are equivalent. There is a double link hinge such as his Honor has just described. There is such a variety of hinges and latches that you have a wide choice as to what you use.

Q. But your initial distinction here, if I correctly apprehended, was that the latch does not have a connecting link in and of itself and the hinge does; is that right?

A. No, they both have. They both act in the same relative manner. They both do the same thing at the same time in the same place when in the operative position.

Q. Now then, we referred to the flange here in your discussions yesterday, particularly relative

(Testimony of Baldwin Vale.)

to Exhibit 47, and I wish that you would tell us your conception of a flange.

A. "Flange" again is defined by Knight's Mechanical Dictionary as a very generic or broad term. It runs all the way from rims to ribs.

Q. From what?

A. Rims to ribs. A rib is a flange; a rim is a flange.

Q. Now taking a cross section of gaskets or packing such as we have in these exhibits that you discussed yesterday, would you say, then, from what you have just said about the broad use of the word "flange" that any cross section of such a packing of which the parts were round or oval or any regular geometric form, such as a hexagonal form or square form, or any [71] other regular form, any cross section which had parts in those standard shapes would have upon it a flange?

A. Well, the dictionary defines that even a lineal body may have a flange, like a girder or a rail.

Q. Well, then, looking at the cross section, that would be at one part of the cross section?

A. Well, an angle—what we call in business a shape, a steel shape, or an angle has a flange. Either one of the extensions would be a flange relative to the other.

Q. If I correctly understood you yesterday, you in one instance referred to the free portion of the Lanninger type gasket as a flange.

A. Yes.



(Testimony of Baldwin Vale.)

Q. You were speaking of a flange relative to a true flange extending into a hub, were you not?

A. Well, there was a cylindrical portion that had a flange that extended into a groove in the sleeve.

Q. And if I correctly understood you, you referred in one instance to that cylindrical portion as being a flange?

A. Well, it depends on which is the base. A part extending from another part is probably a flange. You go back to the human body for all of this. There is a flange on the ear that is almost identical with an exhibit here; still it is a flange.

Q. So that in your mind any departure in cross section from a round, oval or other regular geometrical form would constitute [72] a flange to that cross section; is that right?

A. According to the dictionary, yes, for the purpose of securing the other member into operative position; in other words, for anchoring the packing member in the sleeve, the interior groove in the sleeve.

Q. Yes, but any projection from a regular geometric shape would be a flange as to the main body of the geometric shape; is that right?

A. Well, there might be a question of degree there. Just a stud running out from one side, or a bracket, might not necessarily be a flange, because the use of broad terms is sometimes more confusing than variations of the broad term. A part of a flange gives a bracket, for instance,



(Testimony of Baldwin Vale.)

or a segment, or some more doubtful specific word.

Mr. Middleton: May I have the use of the blackboard just a moment, your Honor.

The Court: Yes.

Q. The Lanninger gasket is shaped something like this, granting my inaccuracies in drafting, in cross section; isn't that right (illustrating on blackboard)?

A. Well, very generally speaking, yes. The flange on the Lanninger has a certain taper and it is uniform on opposite sides of the center.

Q. More that way (illustrating)?

A. No. [73]

Q. Well, the general idea that I am attempting to convey is correct?

A. Well, it has a peripheral extension beyond the cylindrical portion.

Q. Now then, getting at the question that I was endeavoring to inquire about here, we take a square packing and we grant that we have on it a projection such as that, looking now at the cross section. That, according to your definition, would be a flange, would it?

A. Which is the packing?

Q. We are just looking now at the square packing in one of the types of gasket. We have round packing and ring packing——

A. Where is the hole?

Q. In this one we are not claiming any hole at all.

A. A flat gasket?

Q. A flat gasket.

A. Yes.

(Testimony of Baldwin Vale.)

Q. And we find that for some mechanical reason there is a little projection like that on it. Is that a flange?

A. That would probably be called a lug or stud or something. It is a segment of a flange, although flanges as a rule do not pass in the same plane; they are a deviation from the plane.

Q. A deviation from the plane?

A. Yes, like the tread of a car wheel has a flange at an angle to the plane of the wheel. [74]

Q. More of that sort?

A. Well, this doesn't look like anything that is in issue here.

Q. No, but I am getting at your definition of a flange. That is all I am interested in.

Mr. Graham: May I interrupt just a moment, Mr. Middleton. I don't think the witness and Mr. Middleton are talking about the same thing, because the square that Mr. Middleton has drawn there has no section lines in it. The witness evidently thinks that that is a plane, where Mr. Middleton means it is a cross section of a square gasket.

Mr. Middleton: Thank you, Mr. Graham.

The Witness: That is what I tried to bring out.

Mr. Middleton: Yes. Does that help?

The Witness: Now that is a ring, is it?

Mr. Middleton: This would be a square packing around the exterior of your coupler.

The Witness: A square in cross section?

(Testimony of Baldwin Vale.)

Mr. Middleton: A square in cross section. That is what I am getting at.

The Witness: O. K.

Q. Would you then call this projection from the cross section a flange?

A. Does that go around? How big is it?

Q. It goes all the way around. [75]

A. Oh, yes. That would be a flange.

Q. If this round ring that we find in one of these exhibits here had extending from it a small projection in cross section that also would be a flange?

A. No, this is contradictory. You just said that that other projection extended down there; a round ring, in other words, with a square cross section. If it is just a little tit sticking out it is not necessarily a flange.

Q. Perhaps I can better illustrate if I may have, Mr. Bailiff, an exhibit lying down there on the bench. We have here this type of packing which is a round ring.

A. Which is a round ring packing; yes.

Q. Which I have endeavored to show a cross section of here, assuming you had that little lug on it projecting out from the ring and going all the way around.

A. Yes, that would probably be a flange. I have to imagine, because that is a very fragmentary part of the whole.

Q. But you would construe that as flange?

A. If it went around the part, yes.

(Testimony of Baldwin Vale.)

Q. Went all the way around and projected out from the ring? A. Yes.

Q. And the same thing with this geometric shape or any geometric shape?

A. Yes, if it extends outward for the purpose of anchoring or fixing the thing in a sleeve I would say that it was a flange. [76]

Q. Is your definition necessarily confined to fixing it in a sleeve?

A. Well, no, if you want to go into abstract matters. I am trying to keep it down here to something that is in issue.

Q. You see, I am referring to a general definition of a flange so that we can then afterwards apply that to the matters in issue.

A. I can't beat the dictionary. That is the closest definition of a flange that I have heard.

Q. Yes, and yesterday you endeavored to define a flange on the packing in Exhibits 47 and 48 as a flange, and in doing that you identified the exterior portion of those packings as a flange.

A. May I look up the exhibit, your Honor?

The Court: Yes.

Q. It was my understanding of your testimony yesterday, Mr. Vale, that you described to the Court the exterior portion of this packing; in fact, all of the packing except the interior sleeve portion as a flange?

A. As a free cylindrical portion having a substantially semi-circular flange. That is a flange, according to the dictionary.



(Testimony of Baldwin Vale.)

Q. And you base your definition of its being a flange on the dictionary?

A. Yes. It performs the same function in the same place and [77] at the same time of anchoring this free cylindrical portion into the groove in the sleeve.

Q. But I say you base your definition on the dictionary definition?

A. I don't want to go beyond that. That satisfies me.

Q. Do you know whether or not, Mr. Vale, in the industry engaged in manufacturing and selling packings such as are exemplified in the exhibits thus far introduced, there is a trade name or designation for the various types of packings we have had before us?      A. Oh, yes.

Mr. Graham: I object to the question, if your Honor please, on the ground this man is not qualified as a tradesman in packings.

The Court: Well, it is within the scope of cross examination. If he doesn't know, why, he may state his knowledge does not run to that field.

A. The answer is yes, with the qualification that some of them are arbitrary and some of them are positive misnomers.

Q. (By Mr. Middleton) Do you know whether or not there are in that industry generally accepted trade names and designations for the two types of packing we have had here before us?

A. Well, they all have——

Q. You don't know——

(Testimony of Baldwin Vale.)

A. I know them; and the two packings that have been displayed [78] here in this suit both have flanges. Now there are different shaped flanges on a free cylindrical portion.

Mr. Middleton: Just a moment. I move that the answer be stricken. It is not responsive.

The Court: Yes, that is not responsive. The specific question is—you read it, Mr. Reporter.

(The question was read as requested.)

A. I answered yes, and then qualified it.

Q. (By Mr. Middleton) What are those two trade names or designations, referring now first to the packing shown in Exhibit 70?

A. Exhibit 70?

Q. 70.

A. In this Exhibit 70 we find a packing having a free cylindrical part.

Q. No, the trade name or designation.

A. Well, I would call it a flange packing.

Q. They call it a flange packing?

A. Yes.

Q. Do they also call it a hat packing?

A. Yes. A hat packing is, in a general way, referring to a man's hat, and a derby has a decidedly curled flange as compared with a flat straw hat. So there is a broad term again.

Q. That packing, then, in the trade is designated and known generally as a flange or hat packing; is that right? [79]

A. It is so called, yes. It is a hat without a crown, however.

(Testimony of Baldwin Vale.)

Q. Yes. Now then, referring to the packing shown in Exhibit 47, what is the trade name or designation of that packing?

A. I have never seen this packing in any catalogue except the catalogues that sell this particular line of goods.

Q. You said that you knew the trade names.

A. This generally speaking resembles what they call a U-type, referring to the cross section.

Q. So that its closest resemblance in the trade is to what is known in the trade as a U-type packing; is that right?

A. Well, I would hardly say so, because here is a very thin packing lip with a very thick flange. Now it does not resemble what is called a U-shaped packing in any catalogue that I have seen or in the trade.

Q. Does it resemble more closely what is shown as a flange packing in those same catalogues?

A. That is a matter of expediency in meeting a condition. Yes, they are both flange packings.

Q. I am asking what this most closely resembles as known in the trade?

A. Well, that is a matter of opinion. It is as near one as the other. It is undoubtedly U-shaped in cross section. It is undoubtedly a flange-shaped packing. But it does not look like the flange packing that is used in the trade because of this [80] very thin packing member.

Q. From your experience with these matters

(Testimony of Baldwin Vale.)

would you say that that packing would or would not be known in the trade as a flange packing?

A. Well, as I said, the trade uses many misnomers. This resembles——

Q. Would it or would it not?

A. This resembles what is known in the trade as a U-shaped packing, but it is a very modified U-shaped packing. Usually a U-shaped packing is uniform in cross section.

Q. Does it resemble what in the trade is known as a flange packing?

A. As a flange packing?

Q. Yes.

A. Oh, it is as much a flange as U-shaped.

Q. Referring now to the trade definitions and designations of those two packings.

A. Yes. The word “packing” is broad again. Just a plain cylinder might be a packing and is often a packing.

Q. I am asking from your knowledge now whether this more closely resembles a packing known to the trade as a U packing or the packing known to the trade as a flange or hat packing.

A. To me it looks as much like some hats I have seen as a straw hat with a flat brim or a hat with a curled brim, if you want to go to hats. The cross section of a hard hat, a derby, [81] might look like this.

Q. I will ask the bailiff to hand to the witness Defendants' Pre-Trial Exhibit No. 98, calling the attention of the witness to the cuts shown at page



(Testimony of Baldwin Vale.)

58 of the exhibit. Will you examine that, please, Mr. Vale?           A. Yes.

Q. Now you have testified that this packing incident to Exhibits 47 and 48 resembles as much or more the hat packing or flange packing known to the trade as the U-packing. Having reference to the cuts of packing shown on that page, Mr. Vale, have you anything further to add to your description as to the comparison?

A. Well, what I said before, that the U-shaped packing here shown is substantially uniform in cross section in all of its parts.

Q. And because of that fact you feel that the packing incident to 47 and 48 in evidence is just as much like the hat or flange packing as it is like the "U"?

A. If you will notice in the upper right hand corner illustration, marked "Flange or Hat Packing"—

Q. That is right.

A. —that the smaller packing of the two has the flange curled inwardly toward the axis of the packing.

Q. I am asking for the comparison between the gasket in 47 and 48. [82]

A. Very good. Then we find in the upper right hand corner of these illustrations the smaller hat or flange packing has a distinct resemblance to this defendant's gasket because of the curling in of the so-called flange, which in cross section

(Testimony of Baldwin Vale.)

would be very similar to this, a question of degree only.

Q. So that you identify that as closely allied to the idea of the hat or flange packing?

A. Yes. It looks as much like that as it does like the one below with the double annular wall, both of the same thickness.

Q. I will ask the bailiff to hand to the witness Defendants' Pre-Trial Exhibit No. 100, being catalogue of the Anchor Packing Company, and having particular reference to page 397.

Mr. Graham: Mr. Middleton, are you offering these exhibits?

Mr. Middleton: I presume that you want them identified as to origin. I was waiting for that until we have the proper witness on the stand. If you wish to waive the identification as to origin I will offer them now.

Mr. Graham: Yes, I will waive that in order that they may be admitted so that we will know that we are talking about an admitted exhibit.

The Court: All right. Then the previous exhibit may be received.

Mr. Middleton: I will offer both exhibits, your Honor.

Mr. Graham: They are offered for the purpose not of anticipation? [83]

Mr. Middleton: Identification of the types of packings.

(Said catalogue of The Garlock Packing Company, so offered, having been theretofore

(Testimony of Baldwin Vale.)

marked Defendants' Pre-Trial Exhibit 98, was received in evidence as Defendants' Exhibit 98; said catalogue of The Anchor Packing Company, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 100, was received in evidence as Defendants' Exhibit 100.)

Q. (By Mr. Middleton) Referring now to the cuts shown on page 397, Mr. Vale—

A. Yes, sir; I have it.

Q. Do you find there the same similarity of the packing in Exhibits 47 and 48 and the packing there shown as a flange packing.

A. What I have previously said applies as to these. First comes the U-shaped packing, then the so-called cup packing in the center, and then the flange packing. And I call attention to the so-called cup packing, which has an internal flange just as pronounced as the flange in the identified flange packing. They are both flanges of uniform thickness with the free cylindrical part. One is turned in and one is turned out. They are both flange packings.

Q. In your judgment.

A. Well, it is a physical fact. [84]

Q. Well, but you have said that in the trade these are known by these designations. Is that or isn't it true?

A. Yes, and I also qualified that answer by the fact they are often misnomers. Trade designations are arbitrary. Sometimes they are interfered with

(Testimony of Baldwin Vale.)

by trade marks and they have to have their own particular designations.

Q. In this instance you claim that the trade designation is erroneous as to U-packing?

A. Not in this case. This incidentally is correct, that that is a flange packing just as it says it is. So is the cup packing a flange packing.

Q. I am not asking for your definitions of the instruments provided there. I am asking what the trade name is, as you know it.

A. The book speaks for itself.

Q. Then comparing the book, which speaks for itself, and the physical exhibits here, you still maintain that the packings in Exhibits 47 and 48 correspond more closely to what the book designates as a flange packing than they do to what it designates as a U-packing?

A. I said with qualifications that the U-shaped packing resembles this rubber packing I hold in my hand—what do you call it? Defendants'?

Q. Yes.

A. Defendants'. It also in a sense resembles the cup shaped [85] packing in that you have a free cylindrical part with a flange extending inward, and we just discussed which was the flange—it could be either one. Now if you take the last illustration of flange packing, this is a flange; the fact that it is curled doesn't alter the fact that it is a flange.

Q. And you still say that this, then, looks to you like what the trade calls a flange packing?



(Testimony of Baldwin Vale.)

A. What the trade calls a hat packing.

Q. A hat packing? A. Yes.

Q. Which is synonymous with flange packing in the trade?

A. Well, it doesn't look much like a hat, but it displays something as having a flange extending outward from the so-called crown of a hat.

Q. But to you this gasket from Exhibits 47 and 48 corresponds to what the trade calls a flange or hat packing?

A. This is a mongrel. There is not anything in the trade like it. It combines the characteristics of all of its antecedents.

Q. So you say there isn't any name for that in the trade?

A. Not exactly. Taking a very broad designation, it might be either of the two.

Q. It could be either a flange packing or a U packing?

A. It carries the characteristics of all of them. It has a free cylindrical part and it has a flange. Now the shape of the flange is a matter of meeting a condition. [86]

Q. I will ask you whether or not the illustrations of flange or hat packings as contained in these two exhibits you have last had before you, and the illustrations there of U packings, and the cross sections of both, are in your judgment correct trade name designations for those two types of packing?

A. Well, if I ordered a U packing according to

(Testimony of Baldwin Vale.)

this catalogue and I got this I would certainly be disappointed.

Mr. Middleton: Answer my question, please. Read it to him, Mr. Repoerter.

(Last question read.)

A. I am afraid——

The Court: Read it again.

(Last question re-read.)

A. Why, yes.

Q. Now please hold that question in mind, Mr. Vale, because I want to ask the same question concerning these other catalogues.

A. But in giving such an answer I do not admit that this is a true U-shaped packing in accordance with this catalogue.

Q. I see.           A. It is a mongrel.

Mr. Middleton: Will the bailiff please hand the witness Pre-Trial Exhibit 101, purporting to be the catalogue of Belmont Packings and having particular reference to page 52. If the origin may be conceded, Mr. Graham, I will offer Exhibit [87] 101 in evidence.

Mr. Graham: Yes, the origin may be conceded, but its relevancy or materiality is objected to.

The Court: Well, it is merely being used as a basis of cross examination of the witness about his definitions of flange packing. It may be received.

(Said catalogue entitled "Belmont Packings", so offered, having been theretofore

(Testimony of Baldwin Vale.)

marked Defendants' Pre-Trial Exhibit 101, was received in evidence as Defendants' Exhibit 101.)

Q. (By Mr. Middleton) Now referring, Mr. Vale, to the cuts and cross sections——

A. Page 52?

Q. Page 52 of the Belmont Packing catalogues. That is correct, is it not? A. Belmont, yes.

Q. Do those cuts and cross sections and the trade names applied to them correctly represent such trade names as you know them?

A. Yes. I would know what was meant if these names were mentioned.

Mr. Middleton: I will ask the bailiff to hand to the witness Pre-Trial Exhibit 102, and subject to Mr. Graham's admission of the origin I will offer that also as an exhibit.

The Court: It may be received.

Mr. Graham: Yes, the origin is conceded. When I say the [88] origin is conceded I mean——

The Court: The catalogue is that of a concern engaged in this kind of work?

Mr. Graham: Yes.

The Court: He must have robbed all the construction companies of their fancy catalogues.

(Said catalogue entitled "General Rubber & Supply Co.", so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 102, was received in evidence as Defendants' Exhibit 102.)

(Testimony of Baldwin Vale.)

Q. (By Mr. Middleton) What is the page there—40? A. Yes.

Q. Referring to those cuts and cross sections on page 40 of Exhibit 102 and the descriptive references as to flange packings and cup packings, are those descriptive references correct as you know the trade names of the articles portrayed?

A. Yes. I may say again that they do not identify the defendant's packing.

Mr. Middleton: I move to strike the further response.

Mr. Graham: I think that is responsive.

The Court: Well, it may be explanatory. I have already let it in as to the others. All right. Let me ask a question. Mr. Vale, on Defendants' Exhibit No. 101, on page 52, you were looking at the blueprint. Now at the bottom of that page are some photographic illustrations of packings. Which one nearest [89] corresponds to the defendant's, in your opinion. I will give you mine in a minute after you have given yours. How about the one on the extreme left?

A. I think that this so-called U-shaped packing would be the closest.

The Court: The closest? A. Yes.

The Court: Except that that is symmetrical and the other is not?

A. There is an annular groove in this. It is not uniform in cross section and would not serve the same purpose.

The Court: All right.



(Testimony of Baldwin Vale.)

Mr. Middleton: I will ask the bailiff to hand to the witness Defendants' Pre-Trial Exhibit 103, being a catalogue of Johns-Manville packings, with particular reference to both pages 26 and 27, and the illustrations of packings and sectional cuts of packings there shown. And at the same time, subject to Mr. Graham's admission of origin, I will offer the exhibit in evidence.

Mr. Graham: Same admission.

The Court: Is that your last one?

Mr. Middleton: I find two or three more here, your Honor, if you would like to see them.

The Court: Well, I was looking at the clock. I think we had better stop with this one and then adjourn. Ask your question as to the one he has in his hand. [90]

(Said catalogue entitled "Johns-Manville Packings", so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 103, was received in evidence as Defendants' Exhibit 103.)

Q. (By Mr. Middleton) The same question as to the preceding exhibit as tendered, Mr. Vale, if you understand it.

A. Well, taking page 27, we find practically the same condition that has gone before in identifying certain types.

Q. And the U and flange packings as identified by those names are the correct designations as you know them in the trade, are they?

A. Yes. The second one at the top—the first

(Testimony of Baldwin Vale.)

two at the top—in fact, the first three at the top are U-shaped packings.

The Court: All right. May I see that now.

Mr. Middleton: If the Court wishes to discontinue we might just stop here.

The Court: All right. The case will be recessed until two o'clock.

(Thereupon a recess was taken until 2:00 o'clock P. M. of the same day, August 20, 1942, at which time Court reconvened and proceedings herein were resumed as follows: [91])

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### BALDWIN VALE

a witness produced in behalf of the plaintiffs, thereupon resumed the stand and was further examined and testified as follows:

#### Cross Examination (Continued)

Mr. Middleton: I will ask that the bailiff hand to the witness, your Honor, Pre-Trial Exhibit 104 introduced by the defendants, with particular reference to pages 5, 6 and 8 thereof. In this connection, your Honor, I offer Pre-Trial Exhibit 104 as an exhibit if counsel will admit its authenticity.

The Court: Is that another catalogue?

Mr. Graham: I admit its authenticity but stand on the former objection of relevancy and materiality.

The Court: It will be received.

(Said booklet, entitled "Leather Packings,

(Testimony of Baldwin Vale.)

Alexander Brothers'', so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 104, was received in evidence as Defendants' Exhibit 104.)

Q. (By Mr. Middleton) Referring to page 5, Mr. Vale, of Exhibit 104, I will ask you whether or not you find there a drawing or a cut, sectional cut, of what is known in the packing manufacturing trade as a U packing. A. I do.

Q. And on page 6 do you find a similar drawing and cut delineat- [92] ing what is known in the packing manufacturing trade as a flange or hat packing? A. Yes.

Q. And on page 8 do you find similar drawings and cuts representing what is known in the packing manufacturing trades as a V packing?

A. Vee; yes, sir.

Q. And those cuts and drawings are correct delineations of the instrumentalities known by those names in the trade, are they?

A. Those are the names that those particular types bear in the trade.

Mr. Middleton: Thank you. I will ask that the bailiff hand to the witness Pre-Trial Exhibit 99 introduced by the defendant. I at the same time offer the same in evidence if counsel for the plaintiff admits its origin to be as represented on the exhibit.

Mr. Graham: The same stipulation and the same reservation as previously.

(Testimony of Baldwin Vale.)

The Court: All right. It may be received.

(The form, entitled "The Garlock Packing Company Leather Packing Engineering Data Sheet," so offered, having been theretofore marked in Defendants' Pre-Trial Exhibit 99, was received in evidence as Defendants' Exhibit 99.) [93]

Q. (By Mr. Middleton) Referring now to Exhibit 99, Mr. Vale, an order from of the Garlock Packing Company, do you find there cuts and drawings of U and V flange packings, so designated in each instance, as known in the trade?

A. Correct.

Mr. Middleton: If the bailiff will hand to the witness Pre-Trial Exhibit 97, I offer the same in evidence as an exhibit with the same consent of counsel.

The Court: It may be received.

(The form referred to of Chicago Belting Company, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 97, was received in evidence as Defendants' Exhibit 97.)

The Court: This one is merely a repetition of what already appears in the Garlock catalogue, isn't it?

Mr. Middleton: Very nearly so, your Honor. I don't think it is identical.

The Court: It is the same Garlock packing. I



(Testimony of Baldwin Vale.)

think this Exhibit 99 is identical with the blueprint on page 52 of Exhibit 101.

Mr. Middleton: If it is identical, your Honor—I haven't checked them closely—I would withdraw it.

The Court: Well, it is perfectly all right, but they are identical except as to the tolerances, and you can see that what they have done—they have even shaded the way they do. [94]

Mr. Middleton: My thought in that connection was that one is an order form to the trade, and the other, of course, the catalogue.

The Court: That is all right. But I wanted to point out that they are the same. There is no deviation between the two.

Q. (By Mr. Middleton) Referring now to Exhibit 97, Mr. Vale, do you find there the same delineations of U and flange packings as have appeared in some of these preceding exhibits?

A. The U and flange packings are shown, yes.

Mr. Middleton: Now before we proceed here, your Honor, we have talked about the origins of these various Exhibits 97 to 104, inclusive, and I would like it understood that when we speak of origins we mean that as to the catalogues that is the catalogue of the company that purports to issue——

The Court: You mean the source of the catalogue, whose it is. That is it.

Mr. Middleton: As to order forms that it is the order form of the company whose name appears

(Testimony of Baldwin Vale.)

on it. We have spoken vaguely of origins, and I just want to be certain that that is complete for the record as we go.

The Court: Oh, I think so. All right.

Mr. Graham: If your Honor please, if I failed to concede the origin of any of those trade catalogues up to this point I will say that I do concede the origin of them, but object to all of them on the ground that they are irrelevant and immaterial.

[95]

The Court: All right. Well, I will overrule that objection. As I stated before, they are proper cross examination of the expert in order to question his definitions he has given of flanges and others.

Q. (By Mr. Middleman) Now Mr. Vale, these names used in the packing manufacturing trade, as delineated in Exhibits 97 to 104, inclusive, the particular names being U packings, V packings and flange packings, are those names old in the packing manufacturing trade? A. Yes.

Q. Do they go back twenty-five years?

A. Oh, I would think so. I am not positive of that.

Q. When we speak of flanges, Mr. Vale, I find a reference in the patent in suit to a vertical flange. I will ask that the bailiff hand to you Exhibit 6. I believe that is Pre-Trial and has not yet been offered. I believe it is on the Judge's bench. I will ask whether or not the model, Pre-Trial Exhibit 6, does or does not disclose a vertical flange.

A. Well, if the axis of the pipe is horizontal

(Testimony of Baldwin Vale.)

then this flange would be vertical; in other words, perpendicular to the axis.

Q. So that is an exemplification of a vertical flange? A. Yes, I think so.

Q. Now if the witness may have Pre-Trial Exhibit 4. Examining Pre-Trial Exhibit 4, Mr. Vale, do you find there an exemplification of a vertical flange? [96]

A. Yes, portions of this are vertical, substantially vertical.

Q. Will you describe for the record the exact manner in which you there find exemplified a vertical flange?

A. Yes. May I use the blackboard, your Honor?

The Court: Yes. Turn it around or erase what you delineated on it before.

A. I would like to show that this defendants' gasket or packing member is none of those identified catalogue pictures and classifications.

Q. Now Mr. Witness, will you please await questions of your counsel on that question. The immediate question is a delineation of where the vertical flange appears in Pre-Trial Exhibit 4.

A. This portion that starts from the larger end of the packing member and starts outward from the axis and then curves to the parting line of the mold, that is substantially vertical. It does have a little curve.

Q. You claim that is a vertical flange the same as the flange on Exhibit 6?

A. Well, not the same, but similar.

(Testimony of Baldwin Vale.)

Q. Yes.

A. Performs the same function.

Q. Yes. And both of those flanges, then, are vertical to the axis of the pipe?

A. With the qualifications that I have put in the answer, it [97] starts off vertical and curves toward the lip of the packing member.

Mr. Middleton: The reference in the patent, your Honor, is line 27, page 1.

The Court: "The very strong vertical flange"—is that the one?

Mr. Middleton: That is right.

The Court: All right. Is there a question pending? No.

The Witness: Well, I did want to illustrate what I mean by——

The Court: I will allow you to explain your answer.

Mr. Middleton: That is, the answer to this question, your Honor; not to the preceding question at this time.

The Court: All right. The witness has a right to do that.

The Witness: I want to show where the flange starts. We start here with a thin lip, and this goes up in an angle, and an angle on this side, and then it bends off here a little bit (indicating). Now so far it is a V. It goes back here past this angle in the V and starts upward. That is where the flange starts. And wherever it passes this line here it is



(Testimony of Baldwin Vale.)

a flange. Now it goes up there following substantially the radius of the curve in the sleeve, and then it takes another radius and meets over here to the V groove in the center. Now it is not a U shape; it is more nearly a V shape, and this part of it is a flange. If you stop there and join this with dotted lines you [98] would have a flange, both sides of it tapering just as it does in Lanninger for the purpose of filling a groove.

Q. Will you draw a large circle to include more than the drawing that you have made there and to include that portion of the drawing that is the flange as you described it?

A. Well, the flange as I described it is where it leaves the plane of the inner portion of the cylindrical portion which, as a matter of fact, should slant down here a little bit more than I have shown it.

Q. Can you just cut off with a circle that will extend outside your drawing that portion that is a flange. Just draw a big circle around it.

A. Oh, you mean in here some place?

Q. That is right.

A. This portion (indicating on blackboard); in fact, the whole thing is a flange, but this is a continuation of the flange.

Q. That portion within the circle is what you primarily refer to as the flange?

A. Yes, sir, because that is an extension past the plane of the packing member; that is, the cylindrical portion.

(Testimony of Baldwin Vale.)

Mr. Graham: That is not what the witness testified, if your Honor please. The witness testified that that portion was the vertical portion of the flange.

The Witness: The whole thing is a flange, but this is the vertical portion from here to there, regardless of its particular [99] cross section.

The Court: Well, let me ask you this question. Bring me my straw hat, will you? I am going to show you a Panama hat, gentlemen, that comes from South America, and ask you if that is what you call a hat flange, or what kind of flange it is, because it is different from American hats. Why do you insist that the flange which is one of those exhibits, Defendants' Exhibit 4, is in reality nearly like Defendants' Exhibit 6, and is a flange rather than what these catalogues seem to call a U packing, limiting the flange to one like a straw hat, an old fashioned straw hat. We used to call them—I forget the old name—why do you do that?

A. Sailor hats, they called them.

The Court: Yes.

A. The point is that every one of those pictures shows a packing with a flange on it. They are all different shaped flanges.

The Court: I will put on this hat. This is a Panama hat and it is turned up, and I have turned it down. It comes from South America. Now what do you call this?

A. That is a flange.

(Testimony of Baldwin Vale.)

The Court: That is a flange. And when it is turned up——

A. That is all right. It is still a flange.

The Court: In other words, if I had it pressed out like this, if I got caught in some Portland rain, why, it would still be a flange? [100]

A. Still be a flange.

The Court: I see.

A. If it is once a flange it is always a flange.

The Court: Always a flange.

Mr. Middleton: That is all.

The Court : Any redirect, Mr. Graham?

Mr. Graham: Yes, if your Honor please.

### Redirect Examination

By Mr. Graham:

Q. Will you read into the record, Mr. Vale, Mr. Lanninger's definition of his flange on the elastic packing member.

A. Could we save time by prompting me as to the line there?

Q. Well, page 1, column 1, beginning on line 19 and including line 30.

A. Line 19 begins, "On account of the rigidity of the coupling casing it is however very difficult"—I will correct those errors there, shall I?

The Court: Well, it is evidently a typographical error.

A. I will read it as is: "On account of the rigidity of the coupling casing it is however very difficulty to ensure the lightness of the joint be-

(Testimony of Baldwin Vale.)

tween the cup and the casing." "Difficulty" obviously means "difficult" and "lightness" means "tightness".

Mr. Graham: Continue reading through line 30.

A. I continue to quote: "According to the invention this [101] difficulty is overcome by using the elastic packings through which not only is a tight joint capable of being maintained but a certain degree of flexibility is imparted to the pipe line. The very strong vertical flange on the packing cup permits of a specially simple fixation as it is inserted and clamped in a groove of the coupling sleeve."

Q. Now read further at column 2, lines 60 and 61.

A. Line 60: "The flange  $b_2$  of the packing is held in a recess  $e$ . In order to facilitate the tight fitting of the rubber cup on the pipe wall grooves  $b_1$  are arranged in the cylindrical part of the same."

Q. That is sufficient. Will you read lines 85 to 90.

A. Line 85: "The packing  $b$  could be adjustably mounted in the casing  $a$  as shown in Fig 3. In this case the sleeve and neck are composed of two parts  $a, a'_1$  between the adjacent threaded ends  $p$  of which the flange  $b_2$  of the cup shaped packing is clamped."

Q. Now you have already testified that there is rigidity in the casing sleeve. A. Yes.

Q. In Defendants' Exhibits 47 and 48.

A. Yes.



(Testimony of Baldwin Vale.)

Q. And in the elastic packing member of Defendants' Exhibits 47 and 48 is a tight joint capable of being maintained? A. Yes. [102]

A. And is a certain degree of flexibility imparted to the pipe line? A. Yes.

Q. Would you consider the manner of inserting in the packing member in Exhibits 47 and 48 as a specially simple fixation?

A. Well, it conforms to the contour of the groove. The groove is substantially semicircular.

Q. Has it any bolts through it? A. No.

Q. Has it any other means of holding itself in there other than its own resilience?

A. None whatever. It is held in there inherently, and it is further held in there when the pipe is inserted, which makes it impossible to withdraw the packing member.

Q. Now if you wanted a device of the shape and type of the defendants' elastic packing member in Exhibits 47 and 48 would you order a U shaped gasket shown in one of these catalogues?

A. Certainly not. There is nothing like that shown in any catalogue except the catalogue of the manufacturer. This, as I said before, is a mongrel. It is a composite of practically all the packings that are in common practice.

Mr. Graham: Plaintiff offers in evidence Plaintiffs' Exhibit 56, the catalogue of a Mr. Pierce of Eugene, Oregon.

The Court: All right.

Mr. Middleton: No objection. [103]

(Testimony of Baldwin Vale.)

The Court: It may be received.

(The catalogue referred to, entitled "The Pierce Self-Sealing Pipe Coupler", so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 56, was received in evidence as Plaintiffs' Exhibit 56.)

Q. Please refer to page 4, which includes the cover page, page 4 counting from the cover page, and see if you find a gasket disclosed there.

A. I do.

Q. Is it similar to the gasket in Defendants' Exhibits 47 and 48?           A. It is.

Q. Is it called in that catalogue a U-shaped gasket or U-shaped packing?

A. At "D" just under the drawing it says "Cup Shaped Groove in Gasket". It doesn't call it a cup gasket. It just says a "cup shaped groove in gasket", which is not true; it is a V-shaped groove.

Q. He calls it a cup shaped groove in the gasket?

A. No, he calls it a cup shaped groove.

Q. Now in the Lanninger patent, referring to Column 1, lines 5 to 8, will you read what Lanninger calls his gasket.

A. "The line consists of pipes which are held together by means of sleeve-like coupling casings with rubber packing [104] cups."

Mr. Graham: That is all.

Mr. Middleton: No questions, your Honor.

(Witness excused.)

Mr. Graham: Plaintiff rests, if your Honor please.

The Court: All right.

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GEORGE F. McDOUGALL

was thereupon produced as a witness in behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Middleton:

Q. Will you state your full name, please.

A. George F. McDougall.

Q. What is your present age?

A. I am sixty-eight.

Q. Where is your residence, Mr. McDougall?

A. I live in Portland.

Q. What is your business?

A. I am a professional engineer and patent engineer.

Q. Are you admitted to practice in the United States Patent Office?      A. Yes, sir.

Q. Where is your office, Mr. McDougall?

A. At the Board of Trade Building of this city. [105]

Q. Have you testified before in District Courts of the United States in patent matters?

A. Yes, sir.

Q. If you will do so, please, qualify yourself.

A. After the usual preparatory school work I entered the University of Michigan as a candidate

(Testimony of George F. McDougall.)

for the degree of mechanical engineer in 1903. It was the Class of 1907. Leaving the University in 1907 I practiced the profession of mechanical engineer first as an employed person and then later for myself during all of that time.

I am a member of a number of scientific and technical societies as, for example, the American Society of Mechanical Engineers, the American Association for the Advancement of Science, the American Mathematical Society, the Professional Engineers of Oregon, the Oregon Technical Council, and others.

I have done a great deal of writing on technical and scientific matters, particularly with respect to patents, for such publications as the Journal of the Patent Office Society. I have collaborated to some extent with Dr. Emerson Stringham in his books on patent law which are now in the course—there are certain of them published and others in preparation, and particularly his book on Patent Claims. I have lectured before the faculties and engineering classes in universities on mathematics and on patent matters, and I have qualified before various Federal District Courts as an expert in patent matters. [106] I think this will be the eighty-first time if my qualifications are accepted. I am consultant for a large number of firms and corporations, whose names I have not the privilege of mentioning save one,—that is the Oregon State Highway Commission,—on patent matters, and I am now actively practicing the profession as I have outlined it. I



(Testimony of George F. McDougall.)

have taken out thirty-seven patents under my own name, some of which have been profitable and some not. I think that will do for qualifications.

The Court: All right.

Q. (By Mr. Middleton) Mr. Bailiff, please hand to the witness Exhibit 11, being the Lanninger patent in suit. Mr. McDougall, have you previously examined the patent to Karl Lanninger, being the patent in suit in this litigation?

A. I have over a period of years.

Q. Will you kindly analyze that patent for the Court.

A. It is not necessary to read the statement of the invention again. I think it has been done two or three times. But it proposes to use the old bell and spigot joint which originated about one hundred twenty years ago, or such a matter.

Mr. Graham: I object to that, if the Court please, as not explaining the patent.

The Court: Yes, that is the same objection I had to Mr. Vale. That may be eliminated. Go ahead and analyze the patent in the light of what appears on the face of it, not giving any history of the prior art. [107]

A. The patent consists essentially of a bell and spigot joint for pipes in which a flexible packing is substituted for the customary spun yarn and lead. The inventor says "The salient feature of the invention consists in that the coupling sleeves are rigid and have cups of elastic material the neck of each cup fitting tightly on the corresponding pipe

(Testimony of George F. McDougall.)

end, said cups having further each a flange which is clamped in the casing. Only for the reason that they are rigid the coupling casings are capable to withstand the rough handling to which they are submitted". Now I can skip a lot of functions here, and he states: "The very strong vertical flange on the packing cup permits of a specially simple fixation as it is inserted and clamped in a groove of the coupling sleeve." By the way, that distinguishes a packing known as flange packing. A flange packing must always be made rigid at the edge of the flange or over the surface of the flange.

Mr. Graham: I object to that, if your Honor please. That is not in the patent.

The Court: Yes, that is argumentative. That may be stricken out. You had better ask questions. I want him to interpret the patent in the light of the specifications. Go ahead.

A. The flexible packing shown in the drawings, in Figure 1, Figure 3 and Figure 4, is the well known flange packing. The first mentioned figures, 1 and 3, show the flanges clamped by— [108] no, only Figure 3 shows the flange clamped in place by screw threads, which is the customary way of fastening them and is the one described in the specification previously read. And it has one sealing lip which closes against the enclosed free end of the pipe by hydraulic pressure. Hence, the flange is sealed at its edge by one manner of sealing, and at the edge of the contacts of the inserted pipe by another manner of sealing. And then further describing the

(Testimony of George F. McDougall.)

pipe, it is what is described in the patent as a hinged connection and what is referred to in the claim as means hingedly connecting, both of which, to borrow a word from my predecessor on the witness stand, are misnomers. What it really is is a shackle and pin coupling, and it is so known in engineering. In the rigging art, machine designers and everyone else, it is a shackle and pin; sometimes called a clevis. The clevis is shown very clearly straddling the pipe in Figure 2, and it is indicated by the numeral "a<sub>1</sub>", and wherein the eye "c" straddled by the shackle "a<sub>1</sub>" is indicated by the designation "c<sub>1</sub>", and then the cotter pin "d" is placed through the registering holes in the respective parts, and that completes the shackle joint. It has some aspects of a hinge in that it will allow some lateral movement, and perhaps if it is made loose enough it will allow movement all of the way that would be permitted by the lost motion in the coupling where the free end of the pipe enters the coupling shell itself. [109]

Now so much for the description of the pipe that is claimed in Claim 3. Claim 3 starts out: "A pipe joint in connection with pipes one of which has an unthreated end." That is the introductory clause, and I don't know—the Patent Office seldom gives any weight to the introductory clause except as it gives——

Mr. Graham: I object to that, if the Court please.

(Testimony of George F. McDougall.)

The Court: Yes, we can't guess what they do when they allow claims. You see, we take the claim as allowed.

A. All right. The elements of the claim are "A rigid coupling sleeve for coupling said pipes into which said unthreaded end extends, said sleeve having an interior annular groove". Now "annular" means ring-like or ring-shaped, and the groove is further defined in the claim. The groove is located in the inner surface. That locates the groove. Next we have "a packing of elastic material in said coupling sleeve consisting if a free cylindrical part frictionally enclosing the unthreaded pipe end and having a flange". Now a flange is a rib or ridge. It may be circular or it may be as, for instance, a flange on a cylinder, where the cylinder head is bolted on. It may be the flange in a piece of structural steel, such as an I-beam, or it may be where two flanges are made with common edges in the form of an angle iron, or it may be that such a flange forms the base of a T-rail, in which the web and the ball of the rail constitute the balance of the rail. [110] So a flange is always an outstanding part. It may be for strength; it may be for guiding, as the flange on a car wheel; but a flange is a very distinctive thing. It is not a broad designation covering a large number of different shapes. A flange is a flange and is so recognized by engineers when and wherever they see it.

Now the flange is said to be "frictionally retained in the groove of said sleeve". Now have you an



(Testimony of George F. McDougall.)

enlargement of that drawing of the Lanninger patent here? I think it could be explained better, but perhaps I can explain it from this drawing since his Honor has a drawing before him.

The Court: I have a copy of the patent.

The Witness: Now in Figure 3—

Mr. Middleton: Just a moment, Mr. McDougall. I think Exhibit 69 will show the enlargement.

A. Yes. Now the patentee says in Claim 3 that the flange, designated by the letter “e”, which here I point to, is frictionally retained in the groove. Now the groove is designated by “b<sub>2</sub>”. Now “friction” means resistance to motion, and it can be almost zero as in a finely jeweled instrument bearing, or it can be 100 per cent as, for instance, where a wooden handle is driven hard into the eye of a tool. But in this case he says that flange is frictionally retained, from which we must conclude that he means it is retained there immovable against any force that might be used to dislodge it in the [111] ordinary use or operation; consequently, it is sealed there.

One picture of this, Figure 1, shows that the flange is somewhat tapered and evidently it is forced in there something like a cork in a bottle. It would be frictionally retained then in the sense that it was forced in there so tight that any pressure resulting from operation—and it must be remembered that the pressure comes in the opposite direction on top of the cylindrical portion—tends slightly to pull it out. Then that forms a seal for

(Testimony of George F. McDougall.)

the flange at "e", and the other seal is what is called a sealing lip, and that is sealed by hydraulic pressure. Consequently the flange is sealed around its perimeter by means of its engagement with this flange either by the screw thread shown in Figure 3 or by the tapered bottle and cork section like structure shown in Figure 1. So it is sealed at one edge by one means and at the other edge by an entirely different means.

Now the next element we have here is "means for hingedly securing". Now "hingedly", of course, is an adjective, and it is a means for securing said sleeve on the pipe having the unthreaded end. Now "hingedly" probably means "hinged", but as I explained before——

Mr. Graham: I object to his philosophizing as to what is in the patent.

The Court: Well, that may be stricken, the comment on "hingedly." Go ahead. [112]

Mr. Middleton: Just confine yourself more closely to the subject matter.

The Court: Go ahead.

A. Now "means for hingedly securing said sleeve on the pipe having the unthreaded end." Now that is shown as this pin and shackle joint, and it has some movement like a hinge. It also has lost motion in the other direction, and is so designed, as shown in Figure 2, so that it will have lost motion the other way. It is not truly a hinge, because a hinge is a structure providing for movement in a single plane.

(Testimony of George F. McDougall.)

The Court: Well, the adjective is then formed from the past participle of the verb "hinge", "hingedly" meaning it must be a hinge that is solid; that is, so arranged that it moves only in one direction.

The Witness: No, your Honor. It means after the manner of a hinge.

The Court: That is it; like a hinge. If the hinge were loose it might move sideways.

The Witness: It might.

The Court: I see.

The Witness: And then at the same time, your Honor, he did not positively include the word "hinge".

The Court: No. He didn't confine himself to that. He said "hingedly".

The Witness: He means it works something like a hinge, [113] what he says.

The Court: That is what he meant. Of course, the illustration was one embodiment. He protected himself by putting in the usual statement that this is not exclusive. That is just one method, the way he conceives the construction.

The Witness: But he did show an articulating joint.

The Court: Yes.

The Witness: And "means hingedly" would lead me, at least, to conclude that he meant an articulating joint.

The Court: All right.

(Testimony of George F. McDougall.)

The Witness: I think I have answered your question.

Q. (By Mr. Middleton) Now Mr. McDougall, taking up in order the various elements going into the combination claimed, I will inquire first whether or not a pipe joint in connection with pipes one of which has an unthreaded end is new? Did you hear me?

A. No, I didn't hear all of it.

Q. Is a pipe joint in connection with pipes one of which has an unthreaded end a new device in the art?

A. Oh, no. That was many years old before Lanninger entered the field.

Q. Where do you know of an exemplification of that, Mr. McDougall?

A. Well, we found a large number of old patents, the patent of Jones, among others, and I don't remember them by name, it is [114] so long since I looked at them.

Q. I will ask that the bailiff hand to the witness Pre-Trial Exhibit 105. Referring now, Mr. McDougall, to Pre-Trial Exhibit 105 which you hold in your hand——

A. Yes.

Q. ——what is the exhibit?

A. The exhibit is a catalogue and really a reference book published in 1901, I think, by the R. D. Wood Company of Philadelphia.

Q. Is that exhibit your property?

A. That book is my property and it has been in my exclusive possession except for use occasionally



(Testimony of George F. McDougall.)

in court like this ever since the year 1901 when I acquired it.

Mr. Graham: If the Court please, I don't object to the authenticity of this, but if it is put in for the purpose of showing anticipation it is not pleaded.

Mr. Middleton: It is for the purpose of showing the state of the prior art, your Honor.

The Court: All right.

Mr. Middleton: I will offer the exhibit in evidence for that purpose.

The Court: All right. What particular page are you referring to?

Mr. Middleton: I will ask the witness to identify his page.

The Court: It may be received. [115]

The Witness: Page 24.

(The book referred to, entitled "Water and Gas Works Appliances and Pumping Machinery, R. D. Wood & Co., Philadelphia," so offered, having been therefore marked Defendants' Pre-Trial Exhibit 105, was received in evidence as Defendants' Exhibit 105.)

Q. (By Mr. Middleton) Referring now to Exhibit 105, Mr. McDougall, does it teach the existence of a pipe joint in connection with pipes one of which has an unthreaded end?

A. Yes. On page 24 of that book there is a cross section of the standard bell and spigot pipe, cast iron pipe, which has an unthreaded end and

(Testimony of George F. McDougall.)

the spigot portion extends into the bell portion, and there is a text there—it is called in the printed title “Bell and Spigot Pipe”. There is a paragraph of text here in description of it. Shall I read that?

Q. You may do so.

A. “The practice of engineers varies greatly both as to depth and form of bell, and various standard designs have been adopted by the water and gas interests in some of our large cities. The following cuts, reduced sections of 12 inch diameter pipes, give with Table No. 2 the form and general dimensions of the bell and spigot pipe.” Now there is earlier in the book, on page 19, what purports to be a general statement of the origin of the bell—wait; I think I have got this correct. [116]

Q. That is sufficient, I think, for the time being Mr. McDougall. Now then, referring to the illustration you have told us about, does that illustration show also a rigid coupling sleeve for coupling said pipes into which the unthreaded end extends?

A. The acoustics are wrong where you sit. I can't hear you nearly as well as when you were——

Q. Does the illustration you have mentioned—is it on page 24?                   A. Page 24.

Q. ——include a rigid coupling sleeve for coupling said pipes into which the unthreaded end extends?

A. It does have that. Those are both present.

Mr. Middleton: Now if the bailiff will kindly hand the witness Pre-Trial Exhibit 32.

(Testimony of George F. McDougall.)

Q. Looking now, Mr. McDougall, at Pre-Trial Exhibit 32, to which is attached 32-A, an enlarged drawing, I will ask you whether or not you find there in combination a pipe joint in connection with pipes one of which has an unthreaded end.

A. That is correct. That is present.

Q. And a rigid coupling sleeve for coupling said pipes into which said unthreaded end extends?

A. Yes, sir; that is there.

Q. Said sleeve having an interior annular groove in the inner surface? [117]

A. The annular groove is present.

Q. Do you find in the drawing of the patent a packing of elastic material in said coupling sleeve?

A. Yes, sir.

Q. Does it consist of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. It does.

Q. Does it have a flange frictionally retained in the groove of the sleeve?

A. It does have that flange. In fact, it is a replica of the packing used in Lanninger's drawing.

Q. Does it have means for hingedly securing the sleeve on the pipe having the unthreaded end?

A. No, there is no hinged means there. There is means for preventing lateral separation of the pipes under pressure, but they are not in any respect hingedly. It has all of the other elements.

The Middleton: I offer Exhibits 32 and 32-A.

The Court: All right. They may be received.

(Testimony of George F. McDougall.)

(Said copy of Patent No. 580,084, Henry H. Gorter, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 32, was received in evidence as Defendants' Exhibit 32; said enlarged drawing, H. H. Gorter Patent No. 580,084, so offered, having been theretofore [118] marked Defendant's Pre-Trial Exhibit 32-A, was received in evidence as Defendants' Exhibit 32-A.)

[Printer's Note: Defendants' Exhibit No. 32 is set out in full at page 407 of this printed record.]

Mr. Middleton: I will ask the bailiff to put the drawing on the blackboard there so the witness may point out to the Court the elements he has described.

The Witness: The Court will be able to see that at a glance.

Mr. Middleton: Perhaps the Court would like the advantage of the patent while the witness is making his explanation.

The Court: What?

Mr. Middleton: Would the Court like the advantage of the patent?

The Court: No, no. That is all right. I can see it. I will look at the exhibit when he is through.

The Witness: You can read that like a music master reads a score.

Q. (By Mr. Middleton) If you will, please, Mr. McDougall, point out to the Court the pipe joint in combination with the pipes.



(Testimony of George F. McDougall.)

A. The pipe joint joins the pipe designated by "A" and "B", "B" being the inner one and having an unthreaded end that extends into an enlarged portion of the one designated by "A".

Q. Do you find also an interior annular groove within the sleeve containing the unthreaded end?

A. Yes, I do. That is designated by—I will have to refer to the specifications there, the numerals are so indistinct. I am [119] not certain just which of these numerals is intended to represent the groove, but I think it is the letter "d".

Q. Can you point it out to the Court with the pointer?

A. Yes, right at the right hand side of the drawing. And the packing is designated by the letter "C", and it extends up into the groove. The packing being black, it is quite easy to see where the groove is.

The Court: I will take a look at your paper patent.

The Witness: Yes (handing Defendants' Exhibit 32 to the Court).

Q. (By Mr. Middleton) Now then, the packing you have pointed out to the Court; is that true? Have you pointed out to the Court the packing?

A. Yes, I did. The packing is represented by the letter "C".

Q. Does that packing, Mr. McDougall, have a free cylindrical part?

A. It does. The free cylindrical part tapers down to a point the same as it does in all hydraulic

(Testimony of George F. McDougall.)

packings of that general type—or to an edge, rather.

Q. Is that shown in the drawing as frictionally enclosing the unthreaded pipe end?

A. Yes, it is.

Q. Does that packing have a flange as disclosed by the drawing?

A. Yes. I have already pointed out the flange. It extends up into the groove in a direction normal to the axis of the [120] joint.

Q. Is that flange, Mr. McDougall, vertical to the axis of the packing?

A. It is perpendicular to the axis of the packing.

Q. May “vertical” and “perpendicular” be used synonymously?

A. Vertical means up and down. “Perpendicular” normally is a better word. It means substantially at right angles; it is normal to the axis of the packing.

Mr. Middleton: I will request the bailiff to hand to the witness Pre-Trial Exhibit 40.

The Court: Are these just for the purpose of anticipation or for the purpose of proving the prior art?

Mr. Middleton: These are just for anticipation.

The Court: Both of them?

Mr. Middleton: Yes.

The Court: Both are pleaded in the answer?

Mr. Middleton: Yes.

(Testimony of George F. McDougall.)

The Court: I think while you are looking at them we will have a short recess, gentlemen.

(Short recess.)

Mr. Middleton: Defendants offer in evidence Pre-Trial Exhibit 40, being United States Letters Patent No. 811,812, issued on February 6, 1906, to E. V. Anderson.

(Said copy of Patent 811,812 to E. V. Anderson, so offered, having been theretofore marked Defendants' [121] Pre-Trial Exhibit 40, was received in evidence as Defendants' Exhibit 40.)

[Printer's Note: Defendants' Exhibit No. 40 is set out in full at page 433 of this printed record.]

Mr. Middleton: I will ask the bailiff to hand to the witness Pre-Trial Exhibit 36. I have extra copies of this.

The Court: You say you have extra copies?

Mr. Middleton: Yes.

The Court: Sometimes in our district when we have a lot of prior art they make up what they call a trial judge's book, and they put in all the prior art and index it so I have them before me and don't have to bother with the exhibits.

This is not Anderson. This is Berry you handed me.

Mr. Middleton: Yes. I merely offered Anderson. It is not so important. At this time, your Honor, I offer in evidence Pre-Trial Exhibit 36, being United States Letters Patent No. 1,255,577.

(Testimony of George F. McDougall.)

The Court: That is Berry.

Mr. Middleton: Issued on February 5, 1918, to E. F. Berry.

(Said copy of Patent No. 1,255,577 to E. F. Berry, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 36, was received in evidence as Defendants' Exhibit 36.)

[Printer's Note: Defendants' Exhibit No. 36 is set out in full at page 413 of this printed record.]

Q. (By Mr. Middleton) Mr. McDougall, looking now at the disclosures of the Berry patent, Exhibit 36, will you state to the Court whether or not you find disclosed in Berry a pipe joint in connection with pipes one of which has an unthreaded [122] end?

A. Yes, we find that in the Berry patent. The pipe joint, I will further explain, is best illustrated——

The Court: Would you mind raising your voice a little? Speak a little louder, please. Go ahead.

A. The Berry patent shows a flexible joint and it also shows a series of them joined together in Figures 1 and 2 to make a flexible pipe, the elements of which are evidently identical. The pipe itself, or the joint itself, rather, is best illustrated, we will say, in Figures 3 or 4.

Q. (By Mr. Middleton) Do you find, Mr. McDougall, in the structure shown in Berry a rigid coupling sleeve?



(Testimony of George F. McDougall.)

A. Yes, there are two rigid coupling sleeves, both alike and both having bells and both having reduced ends, and the reduced end of one is inserted within the bell of the other, and they are interchangeable in that respect.

Q. Now does the unthreaded end of pipe extend into the rigid coupling sleeve?

A. In this particular case there is a flange riveted on the inside of the bell, the outside or flange of which is unthreaded. The reduced portions of both of them are threaded, however, for another purpose. It is for building up the groove to hold the flanged gasket. The pipes are not threaded together, but it does have the flange packing.

Q. Does it have an interior annular groove in the inner surface? [123]

A. It has an annular groove within the bell on the exterior of the reduced portion. It has the same packing that we find in the Lanninger patent except that it has been reversed, you know. It is just turned around. The packing bears against the outside of the flange in the one bell and is held there by hydraulic pressure against the inside of the bell as shown in Figure 4. That is when the pressure is on. And then when the pressure is off it relaxes to the position shown in Figure 3.

Mr. Graham: I move to strike out the answer, if your Honor please, as not responsive to the question. The question included the phraseology was it

(Testimony of George F. McDougall.)

on the interior of the sleeve. The witness did not answer that question.

The Court: Repeat the question, please.

(Last question read.)

The Court: I will strike out the answer. It calls for a specific thing, Mr. McDougall, so you may answer that "yes" or "no".

A. It has an annular groove on the exterior of the reduced portion of the pipe that etxends into the bell.

The Court: How is it designated on the drawings, Figure 3 or 4?

A. The annular groove is built up of two portions, "P" and "Q".

The Court: Wait a minute, until I look at it.

A. They are in the form of two annular rings screwed onto the end of that reduced portion. [124]

The Court: Oh, yes; I see them now.

Q. (By Mr. Middleton) But this annular groove, Mr. McDougall, is it on the interior surface of the bell itself?

A. No, it is on the exterior surface of the piece that goes into the bell. They just reverse the application of the same elements that are used in the Laninger patent. It is the same thing and works under the same mechanical principles except that the parts are reversed.

Q. Do you find a packing of elastic material in the coupling sleeve consisting of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. Yes, that is designated by the letter "R".

(Testimony of George F. McDougall.)

Q. Does that packing have a flange frictionally retained in the groove of the sleeve?

A. It has a flange frictionally retained in the groove, and the flange is designated by the letter "O".

Q. And means for hingedly securing the sleeve on the pipe having the unthreaded end?

A. Well, there is a universal joint there, and I think under the definitions prevailing in this litigation that I could answer that "yes".

Q. Then the difference that you find between this structure and the Lanninger structure is that the groove is on the exterior of the interior pipe?

A. Yes. [125]

Q. Instead of on the interior of the exterior?

A. Yes, that is all the difference.

Mr. Middleton: I will offer Pre-Trial Exhibit 39 in evidence.

The Court: It may be received.

Mr. Middleton: The same being United States Letters Patent No. 1,292,524, issued on January 28, 1919, to L. W. Serrell.

(Said copy of Patent No. 1,292,524 to L. W. Serrell, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 39, was received in evidence as Defendants' Exhibit 39.)

[Printer's Note: Defendants' Exhibit No. 39 is set out in full at page <sup>429</sup>~~401~~ of this printed record.]

Mr. Middleton: Again, your Honor, I have an extra copy.

(Testimony of George F. McDougall.)

The Court: All right.

Q. (By Mr. Middleton) Now referring to Exhibit 39, the patent to Serrell, will you kindly state whether you there find in the disclosures of that patent a pipe joint in connection with pipes one of which has an unthreaded end?

A. Yes. We will consider the bib of the faucet there as a pipe, because that is what it really is. It is a pipe extension of the faucet "a".

Q. Do you find there a rigid coupling sleeve for coupling pipes into which the unthreaded end extends?

A. Yes. That is designated by the numeral "1", the rigid coupling sleeve, and it contains an interior annular groove within which is clampably held the flange of a flanged hat-like packing indicated by the numeral "5" which has a free cylindrical portion [126] "14" which hugs and hydraulically seals the unthreaded end of the pipe to prevent backing up of water through the loose coupling of the sleeve. It does not have a hinged connection, merely having a set screw "6".

The Court: It is not flexible either, is it?

The Witness: Beg pardon?

The Court: It is not flexible, is it?

A. No, it is not shown flexible.

The Court: That is a common device you use where you have an old fashioned house which has a tub and you would like a shower, you tie that on, and then go to the five and ten cent store and buy



(Testimony of George F. McDougall.)

one of those little hoses there and tie them up, and there you are fixed. Isn't that what that is?

A. That is what it is, for attaching a hose to a faucet. But it shows exactly the same type of hydraulic seal that is used in the Lanninger drawings, and the flexibility evidently was not needed there if they were going to put a hose on right there.

The Court: This device does not intend to tie two pipes together. It is merely what you call a reducer, what you call in plumbing a reducer, to which you can attach a hose. Isn't that what it is?

A. It is for using a hose, but quite evidently a pipe could be attached just as well.

The Court: For what purpose? [127]

A. Well, for any purpose of conducting water.

The Court: I see.

A. The sealing principle is the same.

The Court: All right.

Mr. Middleton: I will ask the bailiff to hand to the witness Pre-Trial Exhibit No. 27, and before it goes to the witness, your Honor, I will offer that exhibit in evidence.

The Court: All right. It may be received.

Mr. Middleton: The same being Letters Patent United States No. 999,169, granted on July 25, 1911, to Theodore N. Jones.

(Said copy of Patent No. 999,169 to Theodore N. Jones, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 27, was received in evidence as Defendants' Exhibit 27.)

(Testimony of George F. McDougall.)

[Printer's Note: Defendants' Exhibit No. 27 is set out in full at page 395 of this printed record.]

Mr. Middleton: I have an extra copy of that, your Honor.

Q. Now is the Jones patent, Exhibit 27, Mr. McDougall, the disclosure of a means of coupling pipes?

A. It is a means of coupling pipes, yes, or hoses or coupling water conduits.

Mr. Graham: I object, if your Honor please, to the witness answering in that manner. I think the question is perfectly capable of having a "yes" or "no" answer and then explaining it.

The Court: Well, he answered it hoses or pipes.

Mr. Graham: One or the other. I want to know which it is, if I may. [128]

The Court: Well, in the face of this it is for hose couplings.

Q. (By Mr. Middleton) The title of the patent speaking for itself has "Hose-coupling", hasn't it?

A. Yes, hose-coupling.

Q. May it as well be used for coupling pipes?

A. Yes, it might as well be used for coupling pipes.

Q. Mr. McDougall, do you find in the disclosures of the Jones patent a pipe joint in connection with pipes one of which has an unthreaded end?

A. Yes, sir.

Q. A rigid coupling sleeve for coupling pipes into which said unthreaded end extends?

(Testimony of George F. McDougall.)

A. Yes, sir; that is present.

Q. Said sleeve having an interior annular groove in the inner surface?

A. Yes, sir; it is provided with an annular grove in the inner surface.

The Court: Where is that? Where do you find that?

A. That annular groove in the inner surface is designated by the number—the flange of the packing that extends into it is designated by the numeral “22” in Figure 2, and the groove there—I find no designating numeral on it, but it is a space at the end of the interior thread on that sleeve and between that and the nut “18” that screws in there. The flange of the packing is inserted in there and evidently clamped by screwing [129] the plug “18” up against it.

Q. (By Mr. Middleton) A packing of elastic material in the coupling sleeve consisting of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. Yes, there is a flange type packing in there.

Q. Does it enclose the unthreaded pipe end?

A. No, it extends into it.

Q. Does that packing have a flange frictionally retained in the groove of the sleeve?

A. It does.

Q. Is there shown means for hingedly securing the sleeve on the pipe having the unthreaded end?

A. There is a latch there that prevents the pipe

(Testimony of George F. McDougall.)

from blowing apart, and it hooks over a keeper made rigid with the unthreaded part.

Mr. Middleton: I will request the bailiff to hand to the witness Pre-Trial Exhibit 52.

The Witness: I now have Defendants' Exhibit marked 52, and the parts of it are marked 52-B and 52-C, which is made according to the disclosure of the Jones patent.

Mr. Graham: I have an objection to that if it is offered.

The Court: Well, it has got to be offered if he is going to testify about it. Is this a model that you made?

A. I didn't make it, no. I don't know who made it.

Mr. Middleton: I am going to offer the exhibit, your Honor. [130]

The Court: Well, of course he can't testify and describe it before you offer it.

Mr. Middleton: Beg pardon?

The Court: He can't testify and describe it before you offer it if counsel has objection.

Mr. Middleton: I will at this time offer the exhibit in evidence, your Honor.

Mr. Graham: I make objection to the exhibit on the ground that is not a model of the Jones patent.

Mr. Middleton: I believe counsel should specify the point of the objection.

The Court: Well, I presume the point of the objection is a very general rule that you can take things from one art into another and be in the realm



(Testimony of George F. McDougall.)

of invention. In other words, coupling for hose is not coupling for pipes to make them rigid, and that is a very well known principle. In one of my recent opinions I referred to that fact, that going from one art to another may involve invention. You can't take a coupling and manufacture it into something else and then claim this has destroyed the patent.

Mr. Middleton: I believe, your Honor, that I have authority here that where the other art is an analogous art——

The Court: Coupling hose is not an analogous art to coupling rigid pipe to be used in irrigation. Coupling hose means coupling rubber hose. I have studied that question but re- [131] cently. I don't know which opinions they are; I haven't got an index to all my opinions, but I can find it very quickly, where that very point was made. I have had them go back to carriage wheels in trying to destroy a very valuable invention.

Mr. Middleton: I am free to concede that if the art were a strange one the rule would not apply, but if it is analogous——

The Court: Well, there is no analogy between coupling hose and coupling pipe. Furthermore, the man did not claim an application to anything else but the realm of hose. You can't construct a model which is not within the contemplation of that and apply it. I will sustain the objection at the present time. If you can show me an authority that you can transpose one art into another where the man claims a right to connect—he has even used male and

(Testimony of George F. McDougall.)

female members, which is the ordinary way of coupling hoses. I have never seen this, but you go down to the five and ten cent store, if you have ever done any gardening and burst a hose, and you buy those little yellow things which you use inside of your hose, and you stick one in one way and the other the other way and then connect them, and your hose is just as good as new. You can't claim that to be anticipation of this art. If you discover any authorities tomorrow you may renew the offer, but at the present time I am not going to go outside of the art itself, and that is [133] coupling pipe and not coupling hose. It is an entirely different art, an entirely different purpose. Hose are generally small and made of fiber or rubber or some such flexible material, which has flexibility in itself, and may be connected for various purposes. The object is entirely different, and the mere fact that it reads on the present patent shows the absurdity of trying to solve problems by merely reading the claims upon a structure. That is why the justices of our Circuit Court have said in itself it means absolutely nothing. As I said, I have seen claims read upon structures that were as foreign as any could be. Furthermore, there is no showing here that this was ever reduced to practice; furthermore, no foundation has been laid for this in the first place. You would have to show that somebody constructed it and that he constructed it according to the teaching of this. But laying that aside, I think

(Testimony of George F. McDougall.)

it is entirely foreign to the art, so for the present I will sustain the objection.

Mr. Graham: I have another objection to it, if your Honor please, on that very ground, in case Mr. Middleton should convince you with authorities, and that is that it is not according to the Jones patent structurally inasmuch as the Jones patent shows a tight sleeve joint with no flexibility between the sleeve and the unthreaded pipe end, whereas this model has been made with a great deal of flexibility.

The Court: Well, of course that would go merely to the cor- [134] rectness of the model. The thing I am concerned with, this is an entirely foreign copy.

Mr. Graham: Yes, I raise that too.

The Court: At the present time I will sustain the objection. However, I will allow counsel to show me authorities to the contrary, to show the similarity between this art and another.

Mr. Middleton: My point, your Honor, was not that I had checked authorities that hose coupling was like pipe coupling, but merely that in an analogous art——

The Court: This is not an analogous art, because otherwise [135] you could resort to all sorts of couplings. The art here is coupling pipe, rigid pipe, used for irrigation purposes, and only pipe couplings are germane; not hose couplings, or anything like that, because hose couplings are entirely different. You have a flexible pipe and a rigid connection.

(Testimony of George F. McDougall.)

Mr. Middleton: I didn't mean to tell the Court that I had authority that a hose was like a pipe.

The Court: No, no. I didn't mean that, but your authority that you can use one from the other. I don't think it is the same field. You must consider what we are dealing with. Pipe has been invented for thousands of years. Pipe has existed because irrigation has existed for many years, and transporting water through pipes of some kind or another is as old as the mechanical arts are, since men began to live together and had to transport water from one direction to another. The novelty that is claimed here lies in providing a method of a loose connection which gives you a flexible joint, so where you had rigid pieces of pipe you would have an element of flexibility which would enable you to move them about or put them on a hillside or put them in all directions. Therefore, we are limited to that art. Otherwise all sorts of couplings might come in. And it doesn't really help very much, you know, because ultimately you can go—every patent attorney has an index of all the patents ever issued, and all he has to do is to go back and find similar things. I have had as many as fifty thrown at [136] me in one lawsuit. But ultimately the real help comes from finding references that are as nearly as they could possibly be in the same art. Frankly, although no objection was made, I can't even see the connection of a stationary faucet introducing a reducer—that is all it is; that other patent, Exhibit 36, is merely what is used in plumbing. I haven't done any plumb-



(Testimony of George F. McDougall.)

ing, but I have been a judge of the District Court long enough, and in a district which has a lot of litigation, to handle almost everything in the catalogue of mechanical arts. And in ordinary plumbing if you have a half inch hose and you want to tie it to a quarter inch hose you introduce a coupling which is known as a reducer, and then you can attach a piece of pipe smaller in diameter. That is all this hose connection is. It is a reducer that will reduce the ordinary spout of a bathtub by giving you a corrugated point into which you can stick a piece of hose made for the purpose, on the end of which there is a sieve-like container through which the water will spout and give you the effect that you have in a shower by sitting down in the tub. I can't see that even that can be said to be a kindred art. That is an entirely different art. We are dealing with a stationary object.

Mr. Graham: I may say, if your Honor please, the reason I did not object to that other one was because I felt that I would have to wait until I had a right to cross examine to show what is in the description. [137]

The Court: That is perfectly all right. I want to have an understanding that in a case of this character my conception of the similarity of the art is that we will have to be confined to rigid pipe, an attempt to connect them by making them flexible, and that examples from any other art such as connecting hoses made of rubber or fiber do not help at all because the art is not the same and the thing

(Testimony of George F. McDougall.)

to be achieved is not the same. So that is the way the record stands at the present time. Let's go on to something else.

Mr. Middleton: In that case, your Honor, I will withhold the offering of some of these patents cited in the prior art, even though they disclose some of the features of the Lanninger patent.

The Court: The Supreme Court in a very famous case has said that when you find a combination, in order to successfully plead anticipation or in order to urge that there is no invention under the prior art merely because the art was in such state that whatever new elements were added by the inventor anyone skilled in the art could have thought of, you cannot defeat one combination by taking one element or two of them and showing that they were in patents such and such and another one in another one. The Supreme Court has specifically held that cannot be done, because that is unfair to the inventor. What you have to show is that the elements or equivalents which were in this very combination existed in the prior art; not [138] scattered through eight or ten patents, but in one patent.

Mr. Middleton: However, if all of the elements of the combination are old and only the combination itself is new, that fact may tend to restrict the application of the doctrine of equivalents.

The Court: Well, that merely gives you a narrow construction. [139]

Mr. Middleton: I think in the light of the Court's

(Testimony of George F. McDougall.)  
ruling I had best wait until morning before proceeding with that.

The Court: I think that is all right. [141]

But I think a patent like Jones is a fair reference—not Jones; I mean Berry; Berry, especially, Gorter and Berry. I am not saying that they are decisive references, but they are good references, references which really show some similarity, either in the component parts or in the functional effect. But aside from the point I raised where I don't think they are analogous, I also feel it is not helpful to the Court, when you can show better references, to present a lot of them which are far fetched. [142]

Mr. Middleton: I think for this evening, then, we will confine ourselves——

The Court: You haven't any others, I mean other than those you are speaking of?

Mr. Middleton: I will sort over the prior art tonight and try to condense it so that we can use less time in the morning on it.

The Court: All right. I think you had better do that. I will be glad to adjourn at the present time. I don't think we will be interrupted tomorrow.

Mr. Middleton: I could continue with the witness on other matters if the Court wishes to continue.

The Court: Well, you may go on until five o'clock if you have other matters.

Mr. Middleton: If the bailiff will hand to the witness Exhibits 47 and 48.

Q. Now referring to Exhibit 47, Mr. McDougall, do you find in that structure of the exhibit a pipe

(Testimony of George F. McDougall.)

joint in connection with pipes one of which has an unthreaded end?      A. It is present.

Q. A rigid coupling sleeve for coupling said pipes into which said unthreaded end extends?

A. That is present also.

Q. Will you indicate it, please, or describe it.

A. The rigid coupling sleeve is marked 49-B and the one with the [143] unthreaded end is——

Mr. Middleton: I will correct you, Mr. McDougall. That is 47.

The Witness: 47-B, yes; and the one with the unthreaded end is marked 47-A.

The Court: No, what is called 47-B is now 48. 47-A is 47.

The Witness: Oh, no. 47-A is 47. It is not 48.

Mr. Middleton: The initial designations on these exhibits, your Honor, are 47-A for one end and 47-B for the other end. There are several that are marked that way. One end is "A" and the other is "B".

The Court: Oh, is that it?

Q. (By Mr. Middleton) Does that sleeve have an interior annular groove?

A. Interior annular groove?

Q. In the inner surface?

A. No, it does not. It has a bell end with a half round groove in it.

Q. A bell end with a half round groove?

A. A bell end with a half round groove. It is not the type of annular groove described and shown in the Lanninger patent at all.



(Testimony of George F. McDougall.)

Q. Now does this exhibit contain a packing of elastic material in the coupling sleeve?

A. It does. [144]

Q. Does that consist of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. Yes, it does have that.

Q. And does it also have a flange frictionally retained in the groove of the sleeve?

A. It does not. What it has is a V-section packing, which is in principle exactly the same thing as a U-section packing. I have heard a lot of argument about this packing—

Q. Well, let's take that slowly, Mr. McDougall.

The Witness: Can I describe this packing?

Q. Well, just a minute. We will get to that. Does this structure have means for hingedly securing the sleeve on the pipe having the unthreaded end?

A. It does not. It has at bayonet joint for connecting them together.

A. It does not. It has a bayonet joint for connecting the structure leave room for a hinged motion?

A. It leaves room for universal motion to the full extent of the lost motion between the outside of the unthreaded pipe and the inside of the bell save as it would naturally be restricted by the presence of the gasket in that half round groove.

Q. Now before we come to the gasket or packing, Mr. McDougall, I will ask you whether or not you know the trade names or designations as employed in the industry making and selling packings.

(Testimony of George F. McDougall.)

A. I do. I have known them for many years.

[145]

Q. Applicable to packings such as that you have in your hand? A. Yes.

Q. And to such packings as are exemplified by Exhibit 6?

A. Yes. I have been thoroughly familiar with them for many years.

Q. What names in the trade are applied as descriptive and as designating gaskets or packings formed to the shape of Exhibit 6?

A. That is what is known as a flange packing or a hat packing.

Q. What name in the trade is applied as descriptive of and as designating packings formed to the model and shape of the packing you have removed from Exhibit 47 and the similar Exhibit 4?

A. That is what is known as a V-section packing, which is in principle exactly similar to a U-section packing.

Q. And you say that the correct trade name designation is a V-section packing?

A. This is a V-section packing, but the principle of its operation is precisely the same as a U-section packing. They make a V-section packing because they will go in a little smaller space than the ordinary U-section packing. It is merely a matter of choice.

Q. Now Mr. McDougall, does the flange packing and the U or V-section packing operate functionally in the same manner? A. They do not.

(Testimony of George F. McDougall.)

Q. Will you explain to the Court the difference in functional operation of the two kinds of packing, the V or U on one side and [146] the flange on the other?

A. A V-section packing—or the flange packing, rather, is illustrated on the blackboard in Gorter Patent No. 580,084. It has a flange which is sealed or held in position by mechanical means. Now in the Lanninger patent that is described as frictionally retained. Grippingly retained might be a better name, but we will just take it frictionally retained, as it is not misleading. Now that outside edge is sealed off against leakage by either forcing or clamping it into that annular groove.

Q. Now we are speaking of flange packing, are we?

A. I am speaking of flange packing.

Q. Then please illustrate with a flange packing in connection with this other one.

A. The flange of a flange packing is always mechanically sealed as contradistinguished from hydro-mechanically sealed. It is mechanically sealed either by forcing it into a groove, like you force a cork into a bottle or something like that, or by clamping it so that mechanical force independent of hydraulic pressure seals that edge of it. Then the inner edge has a sealing lip, and that is forced against the pipe or article that it surrounds, and that is sealed hydraulically. The harder the hydraulic pressure there the tighter the seal. Now that is not true with the flange at the edge. Being mechanically

(Testimony of George F. McDougall.)

sealed it can be overcome by hydraulic pressure to an excessive amount, but the two sealings are absolutely independent. [147]

Q. You would say, then, that in the flange packing there is a mechanical sealing of the flange?

A. Mechanical sealing of the flange, and the hydraulic pressure sealing of the pressure lip, and that is independent of whether pressure comes from the inside of the lip and forces it out or on the outside of the lip and forces it against the pipe. Now then, irrespective of the asymmetrical section of the U-shaped or V-shaped section packings, whether one leg is longer or shorter than the other, whether one is thick or thin, the principle remains the same. It has two sealing lips, and it is held in place usually expansively; not frictionally, but it expands into place as a piston ring does when you are fitting it to a cylinder. You lay it in the cylinder and it expands in the cylinder and it is held there by its own expansion. If you cut a section out of it and lay it into the same groove it will fall out by its own weight, so it is not frictionally held in the way that is described and meant in the Lanninger patent.

Q. How does it act? What is its function in use?

A. Well, when the coupling is dormant, the pipes are we will say laid and are empty, the packing lies in place there and merely occupies its position. If it is well designed its resiliency holds it so that its edges are practically in contact with those surfaces against which it will seal by internal pressure. When water comes through the pipe and pressure appears



(Testimony of George F. McDougall.)

one lip is [148] pushed inwardly; that is, the cylindrical portion is pushed inwardly tightly against the pipe, and the other one is pushed outwardly tightly against the inside of the bell. And it has this difference in operation; that no matter how high the pipe pressure becomes, the hydraulic pressure becomes, inside of the pipe the seal is tight in proportion until you reach the point of destruction where something carries away, because the higher the pressure the tighter the seal. There is that distinguishing feature between the V and U section packings and the flange packing; that one can never be mistaken for the other if you consider that the U and V section packing has two sealing lips which seal oppositely from internal pressure spreading them apart.

Q. Does it then have any mechanical sealing action?      A. It has no mechanical sealing.

The Court: We will adjourn until ten o'clock tomorrow, gentlemen.

(Thereupon an adjournment was taken until tomorrow, Friday, August 21st, 1942, at 10:00 o'clock A. M.) [149]

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Friday, August 21st, 1942, at 10:00 o'clock A. M. Court reconvened pursuant to adjournment and proceedings herein were resumed as follows:

Mr. Middleton: If the Court please, at this time I believe it would be well to offer in evidence certain of the exhibits not yet offered so that we may have them before us as we proceed. At this time I offer in evidence Pre-Trial Exhibit 2, being a model of

coupler similar to those made in commercial use by the plaintiff in this cause.

Mr. Graham: No objection.

(Said model of coupler, so offered, having been theretofore marked Plaintiffs' Pre-Trial Exhibit 2, was received in evidence as Defendants' Exhibit 2.)

Mr. Middleton: Defendants also offer in evidence Defendants' Pre-Trial Exhibit 4, being a packing.

The Court: It may be received.

Mr. Graham: No objection.

The Court: All right. It may be received.

(Said model of packing, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 4, was received in evidence as Defendants' Exhibit 4.)

Mr. Middleton: The defendants also offer in evidence Defendant- [150] ants' Pre-Trial Exhibit 6, being a packing.

(Said model of packing, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 6, was received in evidence as Defendants' Exhibit 6.)

Mr. Middleton: The defendants also offer in evidence Pre-Trial Exhibit 22, being a printed copy of United States Letters Patent No. 1,945,293, issued on January 30, 1934, to R. H. Pierce.

The Court: Is that one of the anticipation patents, or is that offered merely on the prior art?

Mr. Graham: If the Court please, that is a patent not in the prior art. It is some years later than the patent in suit.

The Court: Oh, yes; subsequent to it.

Mr. Graham: It is objected to, therefore, as irrelevant and immaterial to the issues in the case.

The Court: Let me take a look at it. There was something said in the opening statement about the Pierce device, but at the present time I can't see any materiality of a device patented subsequently. As I said before, the mere fact that the defendants claim that they are manufacturing according to another device is not material if, in fact, they are infringing the patent of the plaintiff.

Mr. Middleton: The point would be, your Honor, that we at least import a patentable difference; not necessarily nega- [151] tive infringement, but importing a patentable difference.

The Court: How could a subsequent patent to another person explain a prior patent or affect litigation over a patent filed ten years before? Let's say the patent in suit was applied for in 1923. His patent was applied for in 1931, and that is eight years afterwards. The patent in suit was granted as of February 18, 1930 and the Pierce patent was not granted until January 30, 1934.

Mr. Middleton: I would be quite free to say, your Honor, that it has little bearing, but it does import a patentable difference for whatever that implication is worth.

The Court: I don't know that it is worth anything. I don't see any patentable difference. A subsequent patent by the Patent Office where they might have seen a deviation does not explain a previous patent that they have issued to somebody else. They may have been right in the first place and wrong the second, or vice versa. The mere fact they found a patentable difference does not mean anything. They have found a lot of patentable differences. In the last ten years fifteen straight patents have been invalidated by the Supreme Court, and just the other day, just to break the monotony, they actually sustained a patent. It is the first time they have done it in ten years. Every patent that has gone before them in the last ten years has been declared invalid for want of invention. [152]

Mr. Middleton: It is fair to the Court to say in connection with this that I also propose to offer, if this is admitted, the Gheen patent, which covers one of these locks which is claimed as an infringement, and the Folsom patent, which covers the other lock which is claimed as infringing the Letters Patent in suit, just as Pierce is.

The Court: The mere fact a patent has been issued on one of the elements of a combination would not be material. If that is your object, I will sustain the objection. The objection will be sustained to Exhibit 22 on the ground it has no bearing on the subject. All we are interested in here is one problem as to the patentability, and the second one is the infringement. As I said yesterday,



the infringement is determined not so much by a comparison of the devices but a comparison of the accused device with the teachings of the patent in suit, with the claims. [153]

Mr. Middleton: In that case, your Honor, I will postpone offering Pre-Trial Exhibit 23, copy of United States Letters Patent to Rolfe A. Folsom, and Pre-Trial Exhibit 83, copy of [157] United States Letters Patent to R. L. Gheen, the two patents covering two locking devices shown on Exhibits 47 and 48.

The Court: All right.

Mr. Middleton: The defendants now offer in evidence Pre-Trial Exhibit No. 45, being a certified copy of the File Wrapper and Contents of the patent in suit.

The Court: All right. The file wrapper will be received.

(Said certified copy of File Wrapper and Contents in re Patent 1,747,942, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 45, was received in evidence as Defendants' Exhibit 45.)

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GEORGE F. McDOUGALL,

a witness produced in behalf of the defendants, thereupon resumed the stand and was further examined and testified as follows:

(Testimony of George F. McDougall.)

Direct Examination (Continued)

Mr. Middleton: Now when we closed last evening we were discussing the operation and use of the gasket or packing employed in Exhibits 47 and 48. Will the reporter be good enough to read the last question and answer.

(The record was read as requested.)

Q. (By Mr. Middleton) Now in behalf of the plaintiff, Mr. McDougall, it has been testified that the flange form of packing is wedged in the groove, and that the action of wedging is fric- [158] tional in the groove. Do you understand that?

A. Not so clearly. I think I understood it, but I must be sure.

(Last question read.)

The Court: You haven't finished. You are just making a statement. That is why he doesn't get it.

Mr. Middleton: Yes.

The Court: You haven't propounded a question to him on the basis of that.

Q. (By Mr. Middleton) Does that wedging action that the plaintiff's device secures in relation to the flange packing occur in relation to the packing used in connection with Exhibits 47 and 48?

A. No, sir; it does not.

Mr. Middleton: I will ask that the bailiff hand to the witness Pre-Trial Exhibit 81-B, and I will offer 81-B in evidence, your Honor.

The Court: It may be received.

(Testimony of George F. McDougall.)

(The model so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 81-B, was thereupon marked received as Defendants' Exhibit 81-B.)

Q. (By Mr. Middleton) What is Exhibit 81-B, Mr. McDougall?

Mr. Graham: May I interrupt? In the pre-trial that was offered as an exemplification of the Pierce patent, which his Honor has held to be irrelevant and immaterial and has not admitted. Now are you introducing that still as a model of the Pierce patent?

[159]

Mr. Middleton: Well, I will now identify the structure as the same thing as Exhibit 47 and 48, less the lock, or attempt so to do, at least.

Q. I will ask you, Mr. McDougall, whether Exhibit 81 is a counterpart of Exhibits 47 and 48 excepting that it does not include the locks?

A. That is true; it is. The gaskets are interchangeable.

Q. And this exhibit has a section cut from it, has it?

A. It has a section cut from the bell of the hub.

Q. Now can you show to the Court through the use of Exhibit 81-B what you mean by the lack of frictional engagement of the gasket in the bell or groove?

A. Yes. Now the bell has been sectioned and also the gasket has had a piece removed from it. It is held expansively in place, but not so much, your

(Testimony of George F. McDougall.)

Honor, as if it was a full gasket. Now have you the other piece, counsel, of this?

Mr. Middleton: I have a piece here, although it is not offered as a part of the pre-trial exhibit.

A. Now I remove this main portion of the gasket or packing, and I lay this piece that has been removed up into the groove and I will compress it there with my fingers as vigorously as possible. If I remove my support it falls by its own weight; no friction there at all. But when the packing is put in there the packing is inherently expansive, and it is of course more so when the piece is in it, but it is not frictionally held. It [160] is held by its own inherent resilience. I will now remove the gasket from Exhibit 47 and use it in this section piece, removing the broken or cut gasket and put this one in in its place, and now it stands out firmly in much the same way that it would if the section had not been removed. And then when I insert the unthreaded end it is easy to see precisely what happens. It also illustrates the fact that the sealing is by hydraulic pressure against this thin lip here, and also by hydraulic pressure against the inside of the bell of the opposite lip. The pressure tends to spread this V apart, and the sealing effect is produced solely by hydraulic pressure; it has nothing to do with the fit of any flange in the groove held there frictionally or by any other mechanical means. So that was what I was trying to explain, that the distinction is always unmistakable between a packing having this principle of operation—either a U or V section—is that one edge is sealed



(Testimony of George F. McDougall.)

outwardly against the surface as here, and the other edge is sealed inwardly as against this pipe, and the sealing then is automatic and it is always in proportion to the pressure. The heavier the hydraulic pressure the tighter the seal.

The Court: So you would get a better seal through this method by using what you call a V-shaped sealing than by using the other one, the hat-shaped or the flange?

A. It has numerous advantages. In the first place, the seal is always going to be adequate. I have questioned the efficacy [161] or effectiveness of the seal where the flange is merely pressed in and frictionally held into the groove. I have never tried it and it is a difficult thing to analyze mathematically, because we don't know just what the conditions are. But if that groove was not machined, if it was just left rough, I doubt if it could be made to hold at all, and as the pressure came up the tendency would be for water to work around over the flange and cause leakage over the top of it and maybe depress the flange down and perhaps have it collapse. That is, of course, more or less conjectural unless one would try it. But the mode of operation is entirely different, and I think the result is different. I think this result is superior.

Mr. Middleton: Now I will ask that the bailiff hand to the witness Defendants' Exhibit 49, which I will first offer in evidence.

Mr. Graham: I have an objection to that model, if your Honor please, that it is not in accordance with

(Testimony of George F. McDougall.)

the Lanninger patent if it is offered under the proposition that it is.

The Court: Well, let's find out.

Mr. Graham: I just make my objection at this time.

The Court: They have a right to construct a model of their own giving their conception of what the teachings of the patent are and offer it upon making proper proof of it. You don't have to admit that it is. Then, of course, they will have to prove through this witness that it is constructed according to the [162] teachings of the patent in suit.

Mr. Graham: Well, we are just noting our objection at this time to the offer of the model.

The Court: What are you offering it as?

Mr. Middleton: As a model of Claim 3 of the Lanninger patent in suit, with the particular purpose in this connection of demonstrating through the witness the operation of the gasket.

The Court: Of course, there will be no foundation there because they will not concede that this is constructed according to the teachings of the patent, so you would have to have the expert testify first whether it is.

Mr. Middleton: Yes.

The Court: I will not rule on the matter until a further foundation has been laid.

Q. (By Mr. Middleton) Now examining Pre-Trial Exhibit 49, Mr. McDougall, do you find in that instrumentality a pipe joint in connection with pipes one of which has an unthreaded end? A. Yes.

(Testimony of George F. McDougall.)

Q. Do you find a rigid coupling sleeve for coupling said pipes into which the unthreaded end extends?      A. Yes.

Q. Does that sleeve have an interior annular groove in the inner surface?      A. It does. [163]

Q. Does the instrumentality contain a packing of elastic material in the coupling sleeve?

A. Yes, sir.

Q. Does that consist of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. It does.

Q. Having a flange frictionally retained in the groove of the sleeve?      A. It does.

Q. And means for hingedly securing said sleeve of the pipe having the unthreaded end?

A. Yes, that is also present.

Q. And does this particular instrumentality have cut from it a section in the bell of the female end to permit a view of the inside?

A. It does. Now may I have that copy of the patent?

Mr. Middleton: With this identification by the witness, your Honor, I will again offer the exhibit.

The Court: All right.

Mr. Graham: I object to it, if your Honor please, on the ground it is not in accordance with the teachings of Lanninger.

The Court: Well, the objection will be overruled. It is merely offered in conjunction with the opinion of this witness.

(Testimony of George F. McDougall.)

(The model of pipe coupling above referred to, so offered, having been theretofore marked Defendants' [164] Pre-Trial Exhibit 49-A and 49-B, respectively, was marked received as Defendants' Exhibit 49-A, 49-B.)

Q. (By Mr. Middleton) Now taking Exhibit 49, Mr. McDougall, will you please explain to the Court the operation and use of the gasket in that exhibit.

A. Removing the pipe with the unthreaded end we find the packing member is accurately described in Claim 3, and the cylindrical portion that encircles the pipe has the pressure lip or sealing lip which seals against the pipe by hydraulic pressure when the unthreaded end is exposed. That part of it operates precisely the same as a V-section packing. It also seals in the same manner. Now the other edge, however, of the packing is fitted into a groove here. Now I find that the groove in this particular one is machined and it is a fairly good fit for this flange, but we should remember that the pressure is on top and that holding the thing in my left hand with the shackle pointing to the left this outside surface of the flange is exposed to the atmosphere through here, so there is no supporting pressure in here, but pressure will come in here, will exist in here (illustrating). It will also have a tendency to compress this rubber somewhat, and I seriously question, although I cannot say definitely that it would happen, that the pressure will work this way right around that flange and will leak out. It might not. But it is not



(Testimony of George F. McDougall.)

sealed in the same way. There is [165] no pressure lip present on the other side here. If I can get this out now—which I think I can—now if we could bring this together into a U-shape, something like that (illustrating), and form a pressure lip right here as well as the one that already exists on here, then we would have to eliminate this internal groove here because we would need a smooth surface, and then this pressure lip if it existed could seal against this inner surface of the bell and you would have substantially the other packing. But as they exist the packings are not interchangeable from one bell to the other, because you would have to change both the packing and the bell in order to use it. They are not alike. And the structure in the exhibit containing the bayonet point does not respond to the elements recited in Claim 3 for the reasons that I have just given.

Q. Mr. McDougall, Mr. Vale in his testimony for the plaintiff described the action of the flange in Exhibit 49 there when introduced into the annular groove as a wedging action. Is that correct?

A. Yes, that was well stated. It is wedging action. It must depend on the wedging action for its tightness, because there is no hydraulic action there. The hydraulic pressure, as I pointed out just a bit ago, is all on one side.

Mr. Middleton: Will the bailiff please hand to the witness Exhibit 70.

Q. Now Mr. McDougall, considering the locking means as shown in [166] Exhibits 49 and 70 on the

(Testimony of George F. McDougall.)

one hand, and the two types of locking means shown in Exhibits 47 and 48 on the other——

A. Yes.

Q. ——do you find between those two groups of locking means any difference in function and use?

A. Yes, there is a difference.

Q. What is that difference?

A. I think I would point that out in this way: We will assume we are laying pipe. Now the workman picks up one or the other—it is immaterial which—and we will assume that the other one lays on the ground. From the center of the pipe we put them together and lock them without going to the bell end. And if he is taking the pipe apart he can do the same thing. He can take it from the far end or near the center and disengage them and pull them apart and lay them aside before moving to another place. On the other hand, with Exhibit No. 70 he can do the same thing in the same way until he gets them together. Then he must lay down his pipe, which might or might not give trouble, to see about the registration of these two holes in the lug and shackle, and then insert this separate part here represented by the cotter key, and in disassembling he would have to do the same thing. And if the holes were made much enlarged, as here, there probably would not be much difficulty in getting them together, especially if the pipe were small so that he might handle it easily to get the pin in. But [167] then another thing: When he comes to take them apart—I

(Testimony of George F. McDougall.)

think I have already said that—when he comes to take them apart he would reverse the operation.

Mr. Middleton: Will the bailiff please hand to the witness Exhibit 69. That is a large sketch containing four figures.

Q. Now through the witness of the plaintiff an effort has been made to correlate the identification symbols of the two sketches of the patent in suit to the parts of the two sketches of the accused structure. I wish, Mr. McDougall, that you would take a pointer and correlate those identification symbols to the parts of the accused structure, pointing out the similarities and any differences that occur to you.

A. Answering your question, I will step down from the stand. I find that the draftsman has used a small “a” to indicate the bell end of the coupling.

Q. Which coupling, now?

A. Well, both of them.

Q. All right.

A. And that is correct in both cases. They both serve the same general purpose. I find that he has used the indicia “b” to indicate the free cylindrical portion of the packing shown in Figure 1 of the Lanninger patent, and he has used the same indicator to indicate the inside one of the lips of the V packing used in Defendants’ Exhibit 47. So far there is no objection. The letter “c” has been used to indicate the pipe having the [168] unthreaded end, taken from Lanninger Figure 1, and the same index has been used to indicate the pipe having the unthreaded end in Defendants’ Exhibit 47, and still there is no

(Testimony of George F. McDougall.)

correction. They are all correct so far. Now he has used the letter "d" to indicate the cotter pin in the representation of the Lanninger Figure 1, and he has used "a<sub>1</sub>", "c<sub>1</sub>" and "d" to indicate a hook. Now "c<sub>1</sub>" indicates an eye in the Lanninger patent and "a<sub>1</sub>" indicates a shackle. An he finds all three of them in a hook, which is not correct, in my opinion. I don't think one plain hook can represent three different structures. Now he has the letter "e" indicating the flange in the packing in the Lanninger section, Figure 1, and he uses the same small "e" to indicate the outside of the V-shaped packing well backed away from the sealing lip portion in Defendants' Exhibit 47, and it indicates a flange in one place and half of the V-section packing in the other, which is not correct. I note also that the sealing lip opposite the one correctly indicated by "b" in the drawing of Exhibit 47 is not pointed out and has no index number, which it should have because it has a function equal to the one that is indexed.

Passing now to the section of Lanninger Figure 4, which is practically the reverse of the one shown in Figure 1, the same letters "a<sub>1</sub>", "c<sub>1</sub>" and "d" have been used to indicate a hook—no, "a<sub>1</sub>" is used to indicate a shackle and [169] "c<sub>1</sub>" indicates an eye and "d" indicates a cotter pin. And in transferring those letters to Defendants' Exhibit 48 he again puts all three numbers as indicating one member, a hook. The keeper for the hook he does not signify with a reference, nor does he put one upon the pivot upon which the hook turns. He makes the same error in



(Testimony of George F. McDougall.)

designating a part of the packing delineated as a flange in Figure 4 of Lanninger, and he shows the outside surface of the V-section packing, which is not a flange as heretofore stated.

The Court: You drop your voice too much.

A. He again uses the letter "e" to indicate an indefinite area of the outside surface of the V-shaped packing in Defendants' Exhibit 48, which is no wise, shape, function or result or anything else resembles a flange. And again, he has omitted to designate the opposite or bell side of the sealing lip by reference numeral in order to point it out. So the drawings are quite well done, the sections of Exhibit 48 and Exhibit 47 are well executed and not misleading, but the application of the reference letters in my opinion is misleading, to the extent that I have indicated.

Mr. Middleton: Will the bailiff kindly hand to the witness Exhibit 17.

Q. Having reference now to Exhibit 17, Mr. McDougall, do you find in that structure a pipe joint in connection with pipes one of which has an unthreaded end? [170]

A. Yes, sir.

Q. Do you find a rigid coupling sleeve for coupling said pipes into which said unthreaded end extends?

A. Yes, sir.

Q. Does that sleeve have an interior annular groove in the inner surface?

A. It does not. It has a frusta-conical enlargement near the end.

Q. Does it contain a packing of elastic material in the coupling sleeve?

A. It does.

(Testimony of George F. McDougall.)

Q. Does that packing consist of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. Yes, sir.

Q. And does it have a flange frictionally retained in the groove or the sleeve?

A. It does not.

Q. Does that structure contain means for hinged-ly securing the sleeve on the pipe having the unthreaded pipe end?

A. It has means for latching, but no means of hingedly securing in the sense that is shown in the Lanninger patent. The latch is practically a replica of the latch in Exhibit 48.

The Court: What takes the place of the flange in that device?

A. What takes the place of the flange in that device? Why, the [171] packing is a V-section packing.

The Court: It is a what?

A. The packing is a V-section packing in principle, precisely the same thing as is used in 48.

Q. (By Mr. Middleton) 47 or 48?

A. 47.

The Court: All right.

Mr. Middleton: Will the Court examine that packing, please.

Q. So that you characterize that packing as a V-section packing and not a flange packing; is that correct?

A. It is a V-section packing. It has two sealing lips that work oppositely and works precisely as I have previously explained.

Mr. Middleton: Will the bailiff please hand to

(Testimony of George F. McDougall.)

the witness Exhibit 40, which is a patent. I have an extra copy for the Court here.

Q. Now referring, Mr. McDougall, to the structure delineated in Exhibit 40, being United States Letters Patent No. 811,812, issued on February 6th, 1906, to E. V. Anderson, will you please state whether or not you find in the structure of that patent a pipe joint in connection with pipes? A. Yes, sir.

Q. Does one of those pipes have an unthreaded end? A. Yes, sir.

Q. Do you find in the structure a rigid coupling sleeve for coupling said pipes into which the unthreaded end extends? [172] A. I do.

Q. Does that sleeve have an interior annular groove in the inner surface?

A. The interior annular groove is in the——

Mr. Graham: I object to that.

Mr. Middleton: Just answer the question. Does it or does it not?

A. There is an interior annular groove.

Mr. Graham: I am objecting to the exhibit on the ground that it is a railway standpipe in which the pressure always flows downwardly. It is not a pipe for conveying water generally.

The Court: I think this, however, was one of the references in the Patent Office, wasn't it?

Mr. Graham: I believe it was.

The Court: Anderson and Gorter and other were cited at one time or another.

Mr. Graham: I am sure that it was.

(Testimony of George F. McDougall.)

The Court: This is about the poorest job of photostating I have ever seen. It would take a man with better eyes than mine are to read a portion of this record. I don't know whether it is because of the faintness of the typing or whether it is because of the pooriness of the photography. Just let me see a moment.

Mr. Middleton: Anderson is cited in the last action.

The Court: What?

Mr. Middleton: Anderson was cited in the last real action by [173] the Examiner before the final formalities.

The Court: Well, I will overrule the objection. It is a pipe connection. It is not so far removed from this one.

(The copy of Patent 811,812, E. V. Anderson, so offered, having been previously marked Defendants' Pre-Trial Exhibit 40, was marked received as Defendants' Exhibit 40.)

[Printer's Note: Defendants' Exhibit No. 40 was previously received in evidence on page 188 of this printed record. It is set out in full on page 433.]

Mr. Middleton: Will you please read the last question and answer, Mr. Reporter.

(The record was read as requested.)

The Witness: I want to correct that answer. After examining this thing with a glass I want to state



(Testimony of George F. McDougall.)

that a site for packing if formed, but it is not properly named a groove. It has only one side.

Q. Is there there disclosed a packing of elastic material in the coupling sleeve? A. Yes, sir.

Q. Does that consist of a free cylindrical part frictionally enclosing the unthreaded pipe end?

A. Part of it does, yes. It is a U-section packing.

Q. Does that packing have a flange frictionally retained in the groove of the sleeve?

A. It does not.

The Court: Anderson does not claim the packing in his claims.

Mr. Middleton: I was endeavoring to digest these claims, your [174] Honor, in order to show the manner in which Lanninger obtained his patent in view of this patent.

Mr. Graham: Well, your Honor, that is in the File Wrapper.

The Court: The File Wrapper would speak for that.

Mr. Graham: Which is not subject to examination.

The Court: That is all right. In other words, there are two elements absent from Anderson according to the statement of this witness, because he doesn't show any packing, either a V-shaped or hat-shaped or flange-shaped.

Mr. Middleton: The Court, I am afraid, did not understand the witness. The witness did testify that there is a U-shaped packing in answer—

(Testimony of George F. McDougall.)

The Court: He doesn't claim it. It can't be there unless he claims it.

Mr. Middleton: The witness, I believe, was reading from the drawings, your Honor.

The Court: Well, that is right. The drawings are merely one illustration. You can't infringe the drawings but you infringe the claims. He doesn't claim it. The drawings may be referred to merely when there is ambiguity, but when a man doesn't claim that element as a part of his invention, you can't supply it from the drawings and say that there is. Well, all right. Go ahead.

Q. (By Mr. Middleton) Do you find in the structure of Anderson a means for hingedly securing the sleeve to the pipe having the [175] unthreaded end?

A. Yes, there is a hinge present there.

The Court: I didn't hear your answer, please.

A. There is a hinge present; not shown in the same figure that I was testifying from. I was testifying from Figure 4. The hinge, however, is shown in Figure 1 and I think Figure 2.

The Court: But he doesn't claim it in any of his claims. He only has three claims, and in none of them does he claim that as an element of the combination itself.

The Witness: Were you speaking to me?

The Court: I say, neither of these elements to which you have testified are claimed by him in his claims as elements of the combination. Whether he illustrates them or not does not make a bit of difference, because he has limited himself by not claiming

(Testimony of George F. McDougall.)

them in his claims. You can't enlarge a claim by your specifications. You can limit it, but you can't enlarge it.

Mr. Middleton: He has, however, delineated the structure for the public in his drawings.

The Court: What?

Mr. Middleton: I say, he has delineated the structure for the public in his drawings.

The Court: Well, he has delineated it, but what he does not claim goes in the public domain.

Mr. Middleton: That we come to in Lanninger later.

The Court: What? [176]

Mr. Middleton: I say that we come to in Lanninger later.

The Court: Well, I don't think it is a fair claim of anticipation to go to the drawings in a patent which does not claim the elements which are claimed here. After all, anticipation is not shown by drawings. You are not claiming publication through drawings. The filing in the Patent Office is not publication to the world. A patent is not a publication. Publication means something outside the Patent Office. Drawings are merely illustrative of the idea of the inventor, embodying his invention, and before you can show anticipation you have to prove not drawings but claims in a patent suit which are identical with those claims here. The claims here contain some of the elements, but at least two of them are not claimed in that. Take Anderson's claim 3: "In a valve mechanism the

(Testimony of George F. McDougall.)

combination with a casing provided with an internal valve-seat and embodying in its construction two internal hollow cylinders differing in diameter and having a common axis, one end of the smaller cylinder surrounding the valve-seat and its opposite end communicating with the larger cylinder, the smaller cylinder having outlet for the flow of liquid when the valve is open, a combined valve and piston having its valve portion when closed, substantially fitting the smaller cylinder throughout the length thereof and guided thereby and having the end opposite the piston portion constructed to seat on the valve-seat, the piston portion fitting the larger cylinder [177] der a passage connecting the larger cylinder with a source of supply and with a waste-passage and a valve for alternately closing said passages." He had in mind an entirely different device there trying to achieve different results—trying to control the flow of water to standpipes. The object is the opening and closing of the valve effected by the pressure of the water supply. He was not trying to secure a flexible joint.

In your opinion, Mr. McDougall, do the claims of Anderson read upon this structure—not the drawings; I am not interested in the drawings—you don't infringe drawings—but show me which of these claims of Anderson read upon the device——

A. I didn't read any claims.

The Court: What?



(Testimony of George F. McDougall.)

A. I didn't read any of the claims.

The Court: Then how can you claim anticipation? You don't anticipate a drawing.

A. I wasn't anticipating anything. I was just explaining, your Honor, what was a matter of public knowledge when these drawings were printed.

The Court: Well, all right.

Mr. Middleton: Now if the Court please, before I go into the next subject with this witness, I revert to a matter that came up in the opening statement, and in fairness to the Court I want to make my proposed procedure plain so that if objection [178] it made we may at least know where we stand beforehand. In my opening statement I referred to the action of the plaintiff in this case in drafting certain patent claims for the use of one Ralph H. Pierce, the effect of which in my judgment was to place a construction by this plaintiff on its claims which would now defeat its assertion of the claims in the scope in which they are asserted. The Court instructed that in order to bring anything of that sort into this record it would be necessary that it be tied up to the actual defendants here in the proceedings. In other words, that the estoppel might be set up by these defendants by raising all matters communicated to them. I believe I am correct, your Honor, that far?

The Court: I think so.

Mr. Middleton: And I propose to start, then, with the matter of tying up, so that that matter

(Testimony of George F. McDougall.)

may be determined first, getting back from that to the substance of what was actually done.

The Court: Well, I can't tell by your general statement how you are going to tie it up, but I repeat what I said before. What I meant to say was this: The only estoppel that can arise would be an estoppel in pais that might go to the equity side of the Court. If, for instance, a patentee knows that the manufacturer has been manufacturing a product and he, having that brought to his knowledge, consults with the manufacturer and leads him to believe that his device does not infringe, an [179] estoppel might arise out of that particular dealing. But any dealings with a third party whereby they interpret their claims and whereby they may have given the impression that certain claims in another patent did not conflict with his, that would not amount to estoppel at all. There is no such things as estoppel by interpretation of claims that I have ever heard of in the law of patents, and I have read all the texts. But I have never heard of such a thing as an estoppel by interpretation. If a man is not bound by the embodiment of his claims into a particular device by his drawings, how can he be bound by authorizing a third party to secure a patent on an improvement or modification of his device? Mr. Pierce, if it were claimed that his device infringes and that his patent is invalid in the light of Lanninger's patent, might show the Court that during the pendency of the patent outside the Patent Office

(Testimony of George F. McDougall.)

that they associated and they negotiated and induced him to expend money, effort and energy to secure something which they now claim infringes. That in itself would not defeat their [180] claim. It might go to the question of whether the Court under the circumstances would issue equitable relief or cause them to account. The Court might hold that while it was infringed they were not entitled to an injunction under the circumstances, or at least he was entitled to the profit he had made because they had induced him to expend his money.

Mr. Middleton: I have this citation, your Honor, from the present edition of Walker. That is a four volume work, page 1208. "A patentee's appraisal of the nature of his invention is of great importance. The acts and conduct of the owner of a patent may also give a construction to a claim which will avoid infringement. For instance, where the patentee had for a number of years placed a certain construction on a claim, with knowledge that the defendant during that time had been selling a device for a similar purpose to that of the complainant but which did not infringe the claim as so construed, the complainant was held to be estopped from claiming infringement."

The Court: That is exactly what I said; but not as a third party. Not in aiding somebody else. You would have to show that this concern knew that these people were manufacturing this product for a number of years; that they had communica-

(Testimony of George F. McDougall.)

tions with them and they induced them to go on and now all of a sudden they come in. [181]

I had the Johns-Manville case.

In that case they had a person who had a paper patent relating to an entirely different art. He was constructing what he called a building brick which had a sound deadening effect, and it was made like a brick, but it was shown in that case that no claim was ever made, and that this particular product by Johns-Manville had been on the market for fifteen years and that they had expended millions of dollars in developing it, and this man sat by and saw it done, and then all of a sudden he comes in and says, "Wait a minute, here; you owe me royalties. That is nothing more than an adaptation of my product." Now I held there that was an element to be considered, especially when you have a paper patent. In other words, the principle of estoppel works [182] both ways, but in each case you have to bring the estoppel home to the particular litigant; not to somebody else.

Mr. Middleton: It was that matter of bringing it home, your Honor, which I proposed to start on with Mr. McDougall.

The Court: We will take a short recess. I merely wanted you to understand my position and the thing I based it on.

(Short recess.)

Q. (By Mr. Middleton) Mr. McDougall, may I ask whether or not you represented Ralph H.



(Testimony of George F. McDougall.)

Pierce of Eugene, Oregon, as his patent attorney in making application in his behalf to the United States Patent Office for a locking type of pipe coupling in the year 1937?

A. I was his patent attorney and made such an application.

Q. In that connection, Mr. McDougall, I will ask you whether or not the plaintiff in this litigation offered to assist you by preparing claims to be incorporated in Mr. Pierce's application?

A. Mr. Pierce instructed me—I will answer that yes and explain it. Mr. Pierce instructed me to communicate the contents of that application to the plaintiffs in this case, and [183] after having done so they suggested a list of claims that they thought I should add to the application.

Mr. Graham: Now that is objected to as irrelevant and immaterial to any issue in this case.

The Court: Well, I am going to allow this to go in to see how counsel is going to tie the present plaintiff to that situation.

Mr. Middleton: I will endeavor to do the tying as quickly as possible.

The Court: All right. Go ahead.

Mr. Middleton: May I have, please, Mr. Bailiff, Pre-Trial Exhibit 87. That is a cardboard file of legal papers. I will offer in evidence at this time, your Honor, subject to the identification of a witness, Pre-Trial Exhibit 87-J, a letter from California Corrugated Culvert Company to George F. McDougall.

(Testimony of George F. McDougall.)

Mr. Graham: The same objection for the record.

The Court: All right. Objection overruled.

(The letter above referred to, dated January 7th, 1938, so offered, having been theretofore marked Defendants' Pre-Trial Exhibit 87-J, was marked received as Defendants' Exhibit 87-J.)

Q. (By Mr. Middleton) Mr. McDougall, I will ask that you state whether or not you received through the United States mail at or about the date it bears Exhibit 87-J? [184] A. I did.

Q. Will you read it to the Court, please.

A. It is addressed to myself, Consulting Engineer, Board of Trade Building, Portland, Oregon. "Dear Sir: We recently signed an agreement with Mr. R. A. Pierce for the exclusive use of his new locking type of coupling, and in this agreement we agreed to render assistance, if possible, in the procuring of the best patent possible on this new coupling.

"We referred the specifications which Mr. Pierce gave to us to our patent attorneys, and they feel that the patent will be helped materially by the addition of the claims which we are attaching to this letter. We hope, therefore, that you can introduce these into the case.

"Will you please arrange to let us have copies of all papers passed between yourself and the Patent Office and also copies of any

(Testimony of George F. McDougall.)

action taken by the Examiner. We would like to review all the data and be helpful to you if possible on any replies that are made.

“A copy of this letter is going to Mr. Pierce today.”

Signed by “California Corrugated Culvert Co., L. W. Wyman, Vice-President and Chief Engineer.”

Mr. Middleton: I will ask that the bailiff hand to the witness Pre-Trial Exhibits 88 and 88-A.

Q. Referring to Pre-Trial Exhibit 88-A, Mr. McDougall, I will ask you whether or not that is the set of claims which you re- [185] ceived in the mail with the letter you have just read.

A. It is with the exception of the lead pencil work there. That I put on myself.

Mr. Graham: Mr. Middleton, will you offer that so we can——

Mr. Middleton: I wanted to identify it first. I now offer in evidence Pre-Trial Exhibit 88-A.

Mr. Graham: The same objection as to relevancy and materiality.

The Court: Well, I will overrule the objection and reserve a motion to strike later.

Mr. Middleton: I may as well offer Exhibit 88 so it is complete, and I do so.

(The copy of letter dated January 11, 1938, addressed to Ralph H. Pierce, and unsigned, having been theretofore marked Defendants' Pre-Trial Exhibit 88, and three sheets con-

(Testimony of George F. McDougall.)

taining Paragraphs numbered 6 to 12, inclusive, having been theretofore marked Defendants' Pre-Trial Exhibit 88-A, so offered, were thereupon marked received as Defendants' Exhibits 88 and 88-A, respectively.)

Q. Mr. McDougall, I believe you stated that the pencil memoranda and lines upon the document 88-A are matters that you placed there?

A. That is correct.

Q. Is the typed portion of the document in the same condition as when originally received by you excepting for these pencil [186] marks?

A. It is. None of the typed portion has been changed in any respect.

Q. Looking at the paragraph marked "10" on the second page of Exhibit 88-A, will you please read that to the court.

A. "10", which would be the number of the claim, reads: "A slip joint for pipe sections comprising a sleeve having means for receiving a flexible packing member near each end, said packing members surrounding and frictionally gripping the ends of the respective pipe sections when said sections are inserted into the sleeve, and means carried by said pipe sections for separably connecting them together, said connecting means being within said sleeve and independent thereof and being formed to permit the axes of said pipe sections to be moved out of alignment."

Mr. Middleton: I now offer in evidence Pre-Trial Exhibit 82.



(Testimony of George F. McDougall.)

Mr. Graham: Could I reserve my same objection?

The Court: Yes. This group is allowed with the understanding it is going to be connected.

(The model referred to, consisting of three parts, so offered, having been previously marked Defendants' Pre-Trial Exhibits 82-A, 82-B and 82-C, were thereupon marked received as Defendants' Exhibits 82-A, 82-B and 82-C, respectively.) [187]

Q. (By Mr. Middleton) Mr. McDougall, examining now the exhibit you hold in your hand, will you please give me the number again?

A. Exhibit No. 82-A, 82-B and 82-C.

Q. Examining that exhibit with particular reference to the interior locking means, I will ask you whether or not that locking means is the locking means covered by the Pierce application for patent we have been discussing?

A. Yes, it is. It is very properly stated in that claim that I read you.

Q. Now then, in the year 1938 did you or did you not have any communication with the officers of the defendants in this case concerning the matter of their right to make, sell or [189] use the devices corresponding to Exhibits 47 and 48 in this litigation? A. I did.

Mr. Graham: I object to that, if your Honor please, with reference to Exhibit 47 and 48 until there is some connection between 47 and 48 and the correspondence that he had. He can ask if

(Testimony of George F. McDougall.)

he had some correspondence in those years, but he cannot ask him as to whether it was relative to Exhibit 47 and 48.

The Court: Well, it is merely trying to identify correspondence; that is all. He probably proposes to offer it later on.

Mr. Middleton: This was a conversation, your Honor; not correspondence, between McDougall and these defendants through their representative.

Mr. Graham: McDougall and these defendants?

Mr. Middleton: That is right.

Mr. Graham: These defendants?

Mr. Middleton: These defendants.

Mr. Graham: You mean the plaintiff.

Mr. Middleton: These defendants.

Mr. Graham: McDougall and these defendants?

Mr. Middleton: That is right.

The Court: I don't see how that bears. He was not appointed agent. If he had a communication with the plaintiff with regard to the lock, all right, but they didn't appoint him an agent to communicate anything to anybody else. [190]

Mr. Middleton: That is true, your Honor, excepting that I now propose to show that what happened in connection with this lock is now communicated to the defendants and they have acted thereon.

The Court: Well, by whom? The plaintiff did not authorize Mr. McDougall to communicate to outsiders the correspondence they had. They were merely discussing the Pierce patent. Let's assume

(Testimony of George F. McDougall.)

that you show that he, Mr. McDougall, told them to go ahead and adopt that latch instead of the latch on the other, that would not be binding on the plaintiffs or excuse infringement.

Mr. Middleton: That he did so as the agent of Mr. Pierce, to whom this representation was made.

The Court: You will have to make a showing that the letters went beyond the discussion and that they authorized him to communicate that information to others. I can't see any laches or that the correspondence that he had with the others would be binding on them as authorizing a third party, with whom they were not communicating, to go ahead and infringe their patent.

Mr. Middleton: The point I am getting at, your Honor, is simply this: That plaintiffs place a given construction on their patent. They do that for the benefit of a party who is not here before the Court.

The Court: Yes. [191]

Mr. Middleton: That party, however, is in the business and his agent communicates the information imparted to him,—and it was not imparted in confidence,—to one of his customers who thereupon acts on it. They have knowledge of the plaintiff's construction and they have it authoritatively and they act on it.

Mr. Graham: If that were true, your Honor, that could go through an interminable chain of one person telling another and then that person

(Testimony of George F. McDougall.)

informing another and eventually getting around to the defendant in a patent suit.

The Court: Of course, regardless of what the plaintiff thought, if he secured a patent for Pierce he had a right to sell the device or to allow others to use it under certain circumstances.

Mr. Middleton: The plaintiff in this matter was merely offering the services of his patent counsel to elaborate on the claims that Pierce was developing.

The Court: Any patentee has a right to communicate with another with regard to a certain element in one of his patents for the purpose of considering the proposition of whether it would infringe or whether it would be an improvement on what he is seeking.

Mr. Middleton: But the point here is that the patentee's own construction of a patent at a given time is limited and narrowed by their action as that action is communicated to a [192] defendant in this lawsuit, or these defendants, who thereupon act on the construction placed by the plaintiffs here.

The Court: Oh, I will allow the matter to go in, but I will pay very little attention to it. I would not destroy a patent on that basis. There is no foundation in law for doing it. The mere fact somebody communicates that "I think you have something there" does not authorize a man to go ahead and copy another device. We are not talking about a latch here. We are talking about a



(Testimony of George F. McDougall.)

copy of an entire device. That is what is involved here. The Pierce patent deals only with one element, and that is the latch. The latch might be an improvement on the hingedly connected thing, and yet that would not affect the patent because a latch is old and so is a hinge. The Pierce improvement was merely on the latch, as I understand it.

Mr. Middleton: Well, if the Court takes that view I don't believe we should waste time on it.

The Court: Well, it is not a question of taking a view. That is the view that is disclosed by that communication. I will allow you to have him do that, but I will say that that is not an authorization to infringe.

Mr. Middleton: Not an authorization to infringe——

The Court: They might concede to one man by correspondence that he might have an improvement on his latch within their patent and yet insist that that is not a dedication of that latch, and yet they might claim as against a third party that [193] the whole combination is still good and hold them liable. This is merely in the nature of an equivalent. You can't bind yourself in the correspondence—I don't see anything in the letter as he read it——

Mr. Middleton: Not in this letter. I was purely identifying these claims by the letter.

The Court: I can't see anything in this letter which amounts to a limitation to the world of their interpretation of the claims.

(Testimony of George F. McDougall.)

Mr. Middleton: I am endeavoring to possibly save some time here. I trust I won't be taking too many liberties, but in the correspondence between Pierce and "Calco" we will find one letter in which, referring to this particular interlocking patent application, "Calco" states that they are referring Pierce's application to their patent attorneys to find whether or not there would be infringement of the Lanninger patent. Does that put a different view on it in the Court's mind? If it does not I don't think I will pursue this.

The Court: You see, we are not dealing here with infringement of a lock. We are dealing with infringement of six elements, and therefore any admission that they make as to the lock—the lock itself might be one element, and you can take one element of a combination and improve on it. You can't eliminate one element and have a combination, but if you change one element and secure a more satisfactory result—if your [194] contention, for instance, that this lock cannot be called a hingedly connected thing; that the lock is a lock and the hinge is a hinge, is correct, if your contention as made by Mr. McDougall that when you talk about a flange packing you have in mind something which has been so known to the trade and which has a definite shape, and that a hat-like packing is different, if that contention is correct, you see, there is no infringement because, unless these are within the range of equivalents, you have taken two elements and changed them and substituted something

(Testimony of George F. McDougall.)

else which performs a different function. This latch, for instance, performs two functions, you see, while the other performs one. It can be argued this latch not only holds them together but is an improvement on the other because it is disconnected by one manual movement while to disconnect the other you have to take out the spring cotter from the hole. Now I merely am giving this by way of illustration—I am not deciding it—because it is elementary patent law. In view of that fact I can't see how the correspondence, even if they show that they admitted that a latch of this character would be an improvement, would determine anything, because we are concerned here with an infringement of a device consisting of some six elements, the latch being only one part of it. As long as we have gone this far I am willing to allow him to testify what he told them, but I am indicating that in the light of the principles of law as [195] I conceive them it has very little weight or bearing upon the problem before us.

Mr. Middleton: Well, I started, and I will finish it out, your Honor.

The Court: All right.

Q. (By Mr. Middleton): You say that you then did have a conversation with these defendants in the year 1938?

A. With the head officers of the Alaska Junk Company; yes, sir.

Q. Who was the man?

A. Mr. Clyde Carroll.

(Testimony of George F. McDougall.)

Q. Did you call him or did he call you?

A. He called me.

Q. What did he ask you?

A. He told me that——

Mr. Graham: I object to that, if your Honor please.

A. He told me that some question had been raised regarding his right to sell Pierce couplers in view of the Lanninger patent. He asked me if I knew about it and I said I did, and he said Pierce had referred Mr. Carroll to me for an opinion on the matter, and I went down there to Mr. Carroll's office and talked to him at quite considerable length. My impression is that I wrote a letter, a written opinion, although I am unable to find a copy of it at this time.

Q. What did you tell him?

A. I told him that in view of my construction of the Lanninger [196] patent, and of the construction placed on it by the "Calco" people themselves, that I was certain there was no infringement of the Lanninger patent in the use and sale of the Pierce coupler.

Q. Did you go with Mr. Pierce's authorization?

Mr. Graham: I think this needs some definition of terms.

The Court: Beg pardon?

Mr. Graham: I don't like to be persistently objecting, but I think we need some definition of terms here. He is talking about a Pierce coupler,



(Testimony of George F. McDougall.)

but he doesn't say that the Pierce coupler contains this latch or hook member.

The Court: Of course, they are going to introduce the Pierce patent, I presume, if it has not been introduced yet to show what it was. The answer here anticipates what I thought the answer was going to be, that they were talking merely about the coupler. Of course, you are not charging violation of the coupler; you are charging violation of the entire device, of the claims.

Mr. Graham: Well, I won't persist in the objection, if your Honor please.

The Court: I will receive the testimony and then we will argue about its effect. After all, this is a court of equity. You can even receive immaterial testimony. You are supposed to disregard it. Counsel seems to think he has a point there, and I am letting him put in the facts. [197]

Q. (By Mr. Middleton): In talking to Mr. Carroll did you or did you not take into consideration what you knew about his Claim 10 embodied in Exhibit 88-A?

A. I took into consideration, certainly, all I knew about it and informed him that the then controller—I spoke of them as the owners of the Lanninger patent—had placed a construction on it which took the Pierce coupler outside of the Lanninger claim.

Q. Now by the Pierce coupler, Mr. McDougall, do you mean couplers such as Exhibits 47 and 48 here in evidence?

(Testimony of George F. McDougall.)

A. I mean couplers similar to these Exhibits 81-A, 81-B and 81-C and that Exhibit 47.

Q. That is 47 you have in your hand.

A. Is that 47? I don't know.

Q. Yes. A. And 47 and 48.

The Court: How about this one? What is this one?

A. The latch shown on Exhibit 48 had not been developed at that time.

Q. (By Mr. Middleton): Then it was not similar to 48, then? A. Not 48.

The Court: What is this one? 3?

Mr. Graham: I think that is also 3 and 48. The reason that there are two of those, 3 and 48, your Honor, is Exhibits 3 and 8 were put in on depositions and then we didn't have them avail- [198] able to put the pre-trial numbers in.

The Court: You consider this a Pierce coupler, too, don't you?

A. Oh, yes.

The Court: Exhibit 3?

A. Oh, yes.

The Court: Have you introduced the Pierce patent yet?

Mr. Middleton: I offered it, your Honor, but it was rejected.

The Court: Well, you may renew the offer now.

Mr. Middleton: Thank you. I then offer in evidence the Pierce patent—just a moment, your Honor. This is not the patent that issued pursuant to the application we have been discussing. This

(Testimony of George F. McDougall.)

application we are discussing never ripened into a patent.

The Court: All right.

Mr. Middleton: I don't want to mislead the Court.

The Court: All right. It has been sufficiently identified here.

Mr. Middleton: I will now ask the bailiff to hand me Exhibit 87, being the office file of George F. McDougall, and I now offer the entire exhibit, 87-J having been offered already in a preliminary way, as a single exhibit.

The Court: All right. It may be received.

(The office file folder of George F. McDougall and the documents contained therein, so offered, having been previously marked Defendants' Pre-Trial Exhibits 87, 87-A, 87-B, 87-C, 87-D, 87-E, [199] 87-F, 87-G, 87-H, 87-I, 87-J, 87-K, 87-L, 87-M, 87-N and 87-O, respectively, were marked received as Defendants' Exhibits 87 and 87-A to 87-O, respectively.)

Q. (By Mr. Middleton): Now will you state what that exhibit is, Mr. McDougall?

A. That was my office copies of the patent application made for Mr. Ralph H. Pierce in 1938. It was actually filed November 1st, 1937, and it was assigned Serial No. 172,201.

Q. Did patent ever issue on that application?

A. No, it did not. It was rejected on a foreign patent which shows the same structure.

(Testimony of George F. McDougall.)

Q. I will ask you, Mr. McDougall, to read to the Court the claim, if there is one, that is illustrative of the structure that was there claimed.

A. I will read Claim 1, which is illustrative: "A coupler hook structure for hooking the ends of two pipes together inside of a coupling, comprising a pair of hooks, one of which is made rigid with the inside of each pipe, said hooks being characterized by each having a shank made rigid with the inside of the pipe that projects beyond the end of the pipe more than its thickness and a hook portion thereof that is bent backwards more than 90 degrees and downwardly less than 90 degrees toward the axis of the pipe, to engage with the other hook on the other pipe." [200]

Q. Did that encompass a flexible joint?

A. Beg pardon?

Q. I say did that structure include a flexible joint in pipe couplings?

A. Yes. When the hooks are hooked together inside at one side of the pipe——

Q. Will you demonstrate to the Court, please?

The Court: Will all these models show that?

A. These hooks were part of the claim. When they insert these in here like this, and then relatively rotate one with respect to the other, the pipes lock together inside of the coupling and relatively the flexibility is not impaired.

Q. (By Mr. Middleton): Then please referring to Exhibit 88-A, will you read to the Court again, please, Claim 10.

A. Claim 10?



(Testimony of George F. McDougall.)

Q. Yes, so that we may get this together.

A. "A slip joint for pipe sections comprising a sleeve having means for receiving a flexible packing member near each end, said packing members surrounding and frictionally gripping the ends of the respective pipe sections when said sections are inserted into the sleeve, and means carried by said pipe sections for separably connecting them together, said connecting means being within said sleeve and independent thereof and being formed to permit the axes of said pipe sections to be moved out of alignment." [201]

The Court: All right. Unless you have something special I think we had better stop. We can't be working all the time.

(Thereupon a recess was taken until 2:00 o'clock P. M. of the same day, Friday, August 21st, 1942, at which time Court reconvened and proceedings herein were resumed as follows:)

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Mr. Middleton: If the Court please, I have here another witness, an engineer, whom I would like to ask just a few questions about the operation of these packings so that we may dismiss him, if that is agreeable to the Court.

The Court: All right.

E. A. FINKBEINER

was thereupon produced as a witness in behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Middleton:

Q. Where do you live, Mr. Finkbeiner?

A. Portland.

Q. How long have you lived here?

A. About twenty-nine years.

Q. What is your business, Mr. Finkbeiner?

A. Engineering and sales.

Q. What is your education in engineering?

A. I am a graduate mechanical engineer from the University of [202] Michigan in 1904.

Q. What further work have you done in the engineering line?

A. After college I followed engineering and designing of hydraulic and steam equipment for ten years, and then branched out into sales engineering.

Q. What line of equipment is included in your sales?

A. All classes of power pumps and power equipment.

Q. Are those devices employing hydraulic equipment and principles?      A. Absolutely.

Q. Are you a registered engineer in the State of Oregon?      A. Yes, sir.

Mr. Middleton: Will the bailiff please hand to the witness Exhibits 4 and 6.

Q. Are you familiar, Mr. Finkbeiner, in the pur-

(Testimony of E. A. Finkbeiner.)

suit of your profession with packings and gaskets of the same general type and character exemplified by Exhibits 4 and 6?           A. Yes, sir.

Q. Do you know whether or not those two gaskets or packings are designated in the trade by definitive names?           A. They are.

Q. Taking Exhibit 4—can you see the identification number there?

A. Yes, this is 4.

Q. Will you state to the Court the definitive name of that exhibit in the trade? [203]

A. Well, that is commonly known as a V-type or U-type packing.

Q. Are those names interchangeable?

A. Well, the distinction between the two is that the V-type is shaped more like a “V”, while the U-type is more like the letter “U”.

Q. Looking at Exhibit 6, what is the distinctive designation in the trade of that exhibit and instrumentalities like it?

A. Well, that packing is something like the packing known as the flange packing.

Mr. Middleton: I will ask the bailiff to hand the witness Exhibits 49 and 81.

Q. Now taking Exhibits 49 and 81 and the Exhibits 4 and 6, will you please describe to the Court the mode of operation of the gaskets embodied by Exhibits 4 and 6.

A. Well, this 81—

Q. Take it by itself first.

A. How?

(Testimony of E. A. Finkbeiner.)

Q. Take it by itself first and then come to the other one.

A. This No. 81 employs this V-type gasket which fits into a groove in your tube or pipe here, whatever you call it, and depends entirely on hydraulic pressure for sealing.

Q. Does that mean as to both lips?

A. Both lips, both the outer and the inner lip, are held tight by the pressure. The greater the pressure the greater the pressure on the packing and the tighter your seal. [204]

Q. You say that that depends entirely upon the pressure for sealing?

A. That is right.

Q. Now then, take the other exhibit.

A. Well, this one apparently employs this flange packing, and that has the fitted groove in there. It does not have a compression flange there, though, does it? That inner flange is not movable, but that depends on the tight fit of that groove, apparently, to hold that there, and the other part depends on pressure.

Q. What are the means of sealing, then, in this structure?

A. Well, it is sealed by the flange around the tube here, but up in here it appears that you have got to have a good tight fit there or something to hold that to prevent the water from coming around, or any fluid you might have. In other words, you are depending on compression on this flange to seal that.

Q. And the other end is sealed hydraulically?



(Testimony of E. A. Finkbeiner.)

A. The other end is sealed hydraulically.

Mr. Middleton: You may cross examine.

### Cross Examination

By Mr. Graham:

Q. Mr. Finkbeiner, do you sell packing members too?      A. Sell what?

Q. These packing members or gaskets?

A. Only as parts of the equipment that we handle and occasionally [205] for repairs.

Q. Now if you got an order for a 4-inch U-type gasket, would you furnish the customer one similar to that Exhibit 4?      A. That is this one?

Q. Yes.

A. Before we could furnish it we would have to know the shape of the U, the size and shape of the U, so it would fit into the place where he intended to use it.

Q. The U-type gasket is usually the same thickness in cross section all the way through, isn't it?

A. The U-type?

Q. Yes.      A. Not necessarily.

Q. They vary in thickness?

A. It could be.

Q. One wall is thicker than the other sometimes?

A. A U-type gasket made of leather is usually the same thickness, but when they are made of rubber they can vary in thickness.

Q. Now isn't it a fact that that is a special type of gasket that would not meet an order for either a U-type gasket or a V-type gasket?

(Testimony of E. A. Finkbeiner.)

A. You mean this one?

Q. Exhibit 4.

A. Exhibit 4. To furnish a U-type gasket, or whatever it may be, you would have to have the size and shape of the machine it goes [206] into. In other words, you have got to know the shape of the U before you could provide that packing.

Q. I am asking you if you received an order for a 4-inch U-type gasket would you furnish a gasket similar to that Exhibit 4?

A. I would have to know the size.

Q. I am not asking you that. Please answer the question.

A. What is your question again?

(Last question read.)

Mr. Middleton: I think, your Honor, the witness is entitled to explain his answer as he makes it.

The Court: Yes, but counsel is entitled to have an answer first and the explanation afterwards. The question is so framed that he can answer it.

Mr. Middleton: Would the Court instruct the witness to that effect so he may understand?

The Court: Yes. You may answer "yes" or "no", and then if you desire to explain your answer you may do so.

Mr. Middleton: Did you understand the Court, Mr. Finkbeiner?

The Witness: No, I didn't get that.

Mr. Middleton: The Court instructs you that you must answer "yes" or "no" but that you may

(Testimony of E. A. Finkbeiner.)

then explain your answer if you desire to do so.

The Witness: Will you let me have the question again, please.

(The question was re-read by the reporter.)

A. Similar to that? Yes, I would furnish a gasket similar to [207] this, but I would want all the details as to size of the space it was to go into in order to get the correct shape.

Q. (By Mr. Graham) What do you mean by "similar", when you say you would furnish a gasket similar to that?

A. Well, your question was would you furnish a gasket similar to this.

Q. What do you mean by "similar", when you said you would furnish one similar but different in shape?

A. I didn't say—I said one similar to this, but I would have to know the exact shape because U gaskets are not all the same shape.

Q. Then a U gasket may assume many shapes?

A. It may have different—just like this one—different thicknesses.

Q. What do you call the two parallel portions on a U-shaped gasket or the two portions that are substantially parallel?

A. Well, I don't know as they are ever called by name. They are just called U gaskets.

Q. What portion of that Exhibit 4 is the radially inward portion? You have Exhibit 4 in your hand?

A. Yes.

(Testimony of E. A. Finkbeiner.)

Q. It has two portions, has it not, joined together in a valley?      A. Yes.

Q. What do you call the radially inner portion?

A. You mean the inner part of this? [208]

Q. Well, that would be the radially inner part?

A. Well, you might call that the inner leg and the outer leg.

Q. Then you would call the radially outer portion the outer leg?

A. It is the outer surface of the U packing, is what it is. The outer surface and the inner surface really would be the way to describe it.

Q. They are joined together?

A. That is right.

Q. And have an angular joining on the inner surface?      A. That is right.

Q. If two parts of an object of that kind are joined together so that they have a relationship as in that gasket might not the inner one enclose a pipe inserted therein?

A. Sure; your inside one encloses the pipe.

Q. That would enclose the pipe?

A. That is right.

Q. Would the outer portion of the gasket extend radially outward from that pipe?

A. You say could the gasket extend radially outward?

Q. The outer portion of it, would that extend radially outward?



(Testimony of E. A. Finkbeiner.)

A. In that case you would have this other type of gasket then.

Q. Then both of those radially outer portions would extend outwardly from the portion engaged in the pipe?

A. No, this one does not extend outwardly. It extends, you might say, parallel with the inner rim. It has an inner rim [209] and an outer rim.

Q. What joins them together? A. Sir?

Q. They are joined together, aren't they?

A. These rims?

Q. Yes. A. Yes.

Q. What portion joins them together?

A. Well, it is the inner section of the two of them.

Q. How do they intersect?

A. Well, you take the inside here, you notice how—it is a V shape, and where the V is formed that is where they meet and join together.

Mr. Graham: May I ask the witness to speak a little bit louder?

The Court: Yes, speak a little louder.

A. The inner rim and outer rim have a V shape between them, and at the intersection of that V shape is where they are joined together.

Q. (By Mr. Graham) Have you ever heard of a member spoken of as a flange where they are joined on an angle?

A. I don't understand the question.

Q. Have you ever heard of members referred

(Testimony of E. A. Finkbeiner.)

to as flanged relatively when they have an angular junction?

A. Yes. That would be similar to this (indicating). [210]

Q. That is, you would speak of that as a flange?

A. That is right.

Mr. Middleton: By "this" you mean Exhibit 6?

A. Exhibit 6. I guess that is 6, yes.

Q. (By Mr. Graham) Does that flanged joining have to be a right angle?

A. Well, if they are at right angles you don't get the V or U pattern. This is your V or U type. This one is right angles, which makes it a flange.

Q. You never heard of a flange being anything other than a right angle, a right angle junction?

A. Well, the right angle junction is commonly known as the flange type.

Q. You never heard of a flange being at a greater angle than a right angle?

A. Well, I really don't understand. Have you got a drawing of what you have in mind there?

Mr. Graham: May I illustrate what I mean on the board, your Honor?

The Court: Yes.

Q. (By Mr. Graham) Now if a member came down that way (drawing diagram on blackboard) and had a portion on that way at a right angle of 90 degrees you would say that was a flange. Now, if the same member—you wanted to join something to it at a greater angle than a right

(Testimony of E. A. Finkbeiner.)

angle you would say that was not a flange; [211] is that right?

A. Well, are you speaking about packing now, or any pipe or something like that? Are you referring to packing?

Q. Let me ask you, do you know what a flange is? A. Yes.

Q. I am speaking in common parlance. Is that a flange if it serves a function——

A. Well, when you are talking about packing, if you had a packing that shape you are approaching a V-type again.

Q. I am asking whether that is a flange.

A. Well, are you speaking about packing or structural members or what?

Q. Now you say you know what a flange is.

A. Yes.

Q. Now is that a flange?

A. This is a flange type packing because it has a flange on it.

Q. And what is the other type?

A. U-type or V-type.

Q. All right. Let's take the V-type. What is the relationship of this member to this member (illustrating)? Is it a flanged relationship?

A. It is a V form of packing.

Q. What is the mechanical structure? A V is not anything in mechanics, is it? What element is a V in mechanics?

A. Well, it is just a term applied for shape.

(Testimony of E. A. Finkbeiner.)

Q. Now a flange is a mechanical term, isn't it?

A. Yes.

Q. Is one of these members not a V flange with relation to another in a packing?

A. Well, they are not commonly known as flanges.

Q. Are they parallel?                      A. What?

Q. Are they parallel?

A. I would not call them so.

Q. What is their relationship?

A. Just a matter of shape.

Q. You are a mechanical engineer. What is the mechanical relation of two members joined that way (indicating)?

A. Well, they are joined together to make a V shape. That is why you get the distinction between the flange type and the V-type.

Q. All right. Now suppose there were members like that at right angles.                      A. Yes.

Q. You have mechanically a name for that, haven't you, if that was a cross section of a member?

A. Yes, in a packing that would be called a flange type.

Q. Then if you revert that over from a vertical line to a horizontal line and turn it in this position (illustrating on blackboard) where the axis of the juncture is vertical you have got the flange type just turned at a different angle, [213] haven't you? In other words, where one leg is vertical and the other is horizontal you have got a wide



(Testimony of E. A. Finkbeiner.)

V, haven't you? If it is that way it is a V (indicating)?      A. That is right.

Q. And if it is that way you say it is flanged?

A. Well, one is a V shape and the other is an L shape.

Q. One is L-shaped, and the "L" when you turn it this way is a relatively wide V?

A. Well, but then that does not really apply in packing. In packing the angle——

Q. I am trying to get a name for a portion. I am not asking you about the function. I am asking what you would call that junction between those two elements on Exhibit 4, the radially inner and the radially outer?

A. Well, in packing you would call this a flange type and the other one a V or U type or a cross between them.

Q. All right. Now the angular junction between the two, one has a right angle?

A. That is right.

Q. Is that your point?

A. That is right.

Q. And one has something less than a right angle?      A. That is right.

Q. If you made that angle a little wider it would be a right angle; is that right? [214]

A. Well, if you made it wider you would have what you have got above there.

Q. But this you call a flange packing?

A. That is right.

(Testimony of E. A. Finkbeiner.)

Q. And then when you turn that in a little bit different direction those legs, as you call them, haven't any flanged relationship at all?

A. I didn't say that. But you have got into what you call a V-type and a flange-type of packing.

Q. Well, is one of these members flanged relative to the other?

A. Well, when you are speaking about packing——

Q. Can you answer my question?

The Court: He is not talking about packing. He is talking about mechanics in general, whether that could be a flange.

A. In mechanics? Yes, it would be a flange in mechanics, but not as applied to packing.

Q. (By Mr. Graham) But as a trade name that is used in the trade to distinguish them as commercial propositions you would call one a flange?

A. Call one a flange packing.

Q. You might call another a V and you might call another a U?      A. That is right.

Q. But those are trade terms to distinguish?

A. That is right.

Q. What were the trade terms in 1923? [215]

A. As far as I know they have not changed.

Q. Were you in business at that time?

A. Yes, sir.

Q. They still called them——

A. U packing.

(Testimony of E. A. Finkbeiner.)

Q. U packings?

A. And flange packings.

Q. And V packings, so that back in 1923 the flange packing and the V packing would both be relatively flanged portions mechanically?

A. Well, we would not commonly speak of them as a flange.

Q. I am not talking about what you would speak of them as, as trade terms. What would be their mechanical relationship, their structural mechanical relationship, as you see here on the blackboard?

A. Well, as I see it you would have there the flange type, the right angle type, and the other is a V or U type.

Q. Aren't you getting back to calling them what they are called by the commercial trade?

A. Well, we have to call them by what they are known as.

Q. In commercial language, but what is their structural relationship? Call them A, B and C, if you want to, but what is their mechanical structural relationship? Those two members I will indicate "A" and "B" (indicating on blackboard).

A. Well, as related to packing they would be the flange [216] type and the V type. That is the only way I can describe it.

The Court: What do you call a flange? How would you define a flange generally, the dictionary definition? A. A flange?

The Court: Yes.

A. Well, a flange is a projection; for instance,

(Testimony of E. A. Finkbeiner.)

on a pipe it is a projection at right angles at the end of the pipe for joining two adjacent sections of pipe.

The Court: Well, using it in packings the phrase "flange packing" has acquired a special meaning and refers to a flange of that angle? It is a different angle—a right angle, I mean?

A. That is it; like this one (indicating).

The Court: Like No. 6? A. Yes, sir.

The Court: No. 4 overlaps more like——

A. Well, that is made like a V.

The Court: A V?

A. Yes. The application of this is different from that. This depends on clamping to make this joint here for fitting it tight, while this just depends on pressure on the inside for forcing the two members apart.

Q. (By Mr. Graham) Would you call this radially outer member a rim?

A. You could call it the outer rim and inner rim. [217]

Q. What is their relative angular relationship?

A. Well, anything from a V to a U.

Q. This figure "A" here approximately represents the shape of that inner channel in cross section, does it not? A. That is right.

Q. And this approximately represents the angle of Exhibit 6? A. That is right.

Q. And this you would say was flanged and this you would say was not flanged? A. No.

Q. That is, you say that Exhibit 6 has a flanged



(Testimony of E. A. Finkbeiner.)

relationship and Exhibit 4 does not have a flanged relationship, though the angular relationship between them is approximately the same?

A. Well, you can't make an angle out of that one, out of 4.

Q. Isn't there an angle in it?

A. It is an angle, yes, but not the same angle.

Q. How much difference is there, approximately?

A. Somewhere between—let's say about thirty or sixty degrees, something like that.

Q. This radially projecting member of Exhibit 6, or that radially extended member of Exhibit 6 extends into a groove in the sleeve of the coupling; is that correct?

A. That is the way it is shown on your sample here, yes.

Q. A little louder.

A. That is the way it is applied on that sample.

[218]

Q. Which sample is that?

A. Oh, one of these you handed me here a while ago.

The Court: I think it is obvious by now that that is a fact, and that is the way it is described in the patent. It has been described so often I don't see it is necessary to take the time to have the witness tell us that. It is evident that goes into a groove and is a means of holding it.

Q. (By Mr. Graham) And in Exhibit 4 the

(Testimony of E. A. Finkbeiner.)

radially outer member goes into a groove, an internal groove, in the sleeve, does it not?

A. Yes, but not the same as on this one.

The Court: What is the difference?

A. Well, this one, this No. 4, fits in this one, and we are not depending on clamping this packing in there. It is merely fitted in there, and we depend on tightness for the pressure to come in between the two rims of the packing, and that pressure between the rims forces the two rims of the packing out to make a tight joint. Now in this one you fit a tight flange in here, and you are depending on that flange to be clamped mechanically or otherwise to hold that tight.

Q. (By Mr. Graham) Now is the radially outer portion of Exhibit 6 held in the groove? That is the question I want you to answer.

A. Will you please repeat that question again?

Q. Is the radially outer portion of Exhibit 6 held in the groove in the sleeve? [219]

A. Is it held in the groove in the sleeve?

Q. Yes.

A. Yes, it is held in the groove, as I take it here—do you have another sample of this or just that one?

Mr. Middleton: You want a closed sample of that, Mr. Finkbeiner?

A. Yes, please.

Mr. Middleton: If you will look at the gray paint exhibit by your right foot.

A. Is that the same one? That is your V pack-

(Testimony of E. A. Finkbeiner.)

ing in that one. Do you have another sample of this packing?

Q. (By Mr. Graham) Now I think you have the right one, but I can't see the exhibit number from here. A. That is 47-B.

Q. All right. Now what packing have you in your hand, Mr. Finkbeiner?

A. That is No. 6.

Q. All right. Now let's take the other one, Exhibit No. 4, and will you take that Exhibit No. 47, which was the enameled one you had right there. A. This one?

Q. Yes. When inserted in the sleeve member is the radially outer portion of your packing member, Exhibit 4, held in an annular groove in the sleeve? A. It is. [220]

Q. Is it bolted in? A. No, sir.

Q. Glued in? A. No, sir.

Q. Is it held in by the friction between the inner face of the groove and the outer face of the packing member?

A. The packing No. 4 is made to correspond with the groove in your flange here or in your casing.

The Court: It fits in?

A. It fits in there.

Q. (By Mr. Graham) So that there is contact between the two?

A. Yes, they fit in there. They fit reasonably close.

(Testimony of E. A. Finkbeiner.)

Q. And it does not have motion to fall out of the groove because of the way it fits in there?

A. To fall out of the groove?

Q. Yes, it won't fall out of the groove when you take that pipe end out, will it?

A. No.

Q. In other words, it does not have motion in there; it is not loose?

A. No, it just fits reasonably tight, as I see it here.

Q. Now is that what you call a frictional fit?

A. A frictional fit?

Q. Yes.

A. No, that is not—I would not call that a frictional fit. [221] It is made to fit that groove.

Q. But it is a reasonably tight fit that has a resistance to motion in there?

A. Yes, you can take the shape as offering resistance to movement, yes.

Q. Now isn't that the meaning of friction, a contact which resists motion?

A. You don't get friction until you get motion.

Q. Well, it resists motion?

A. Friction will resist motion; yes, sir.

Q. And that has enough of a hold in there to keep it from falling out?

A. The friction doesn't hold it in there. It is the shape that holds it in there.

Q. It is the shape of the groove that holds it in there?



(Testimony of E. A. Finkbeiner.)

A. The shape of your packing.

Q. But it fits closely or snugly into that groove?

A. That is right.

Q. It fits so snugly that it won't fall out?

A. Well, it couldn't fall out from its shape, because your outer diameter——

Mr. Graham: May I ask that the witness answer my question, if your Honor please? I asked him if it fits so snugly that it won't fall out. That is capable of a "yes" or "no" answer.

The Court: I think you ought to be able to give an answer [222] to that, Mr. Finkbeiner.

A. Whether it fits snugly so it can't fall out? Is that your question?

Mr. Graham: Yes.

A. It doesn't have to fit snugly to keep from dropping out because of the shape.

Q. But this one here fits in snug contact?

A. Apparently so.

Q. Now when the pipe that you have there with an unthreaded end is inserted the inner circumferential portion of the packing member, No. 4, fits snugly about the pipe, doesn't it?

A. That is right.

Q. When there is pressure in there the pressure backs up against the gasket and spreads the inner portion inwardly against the pipe; is that right?

A. That is right.

Q. And it compresses the outer portion against the internal wall of the annular groove?

A. That is right.

(Testimony of E. A. Finkbeiner.)

Q. By the way, would you call that an internal annular groove in the sleeve? A. In here?

Q. Yes.

A. That is an annular groove around there.

Q. And when the water is in the pipe and that outer portion is [223] pressed outwardly against the wall of the groove then you have got even greater pressure than you have without the water in there; that is apparent, isn't it?

A. Will you repeat that question, please?

Q. I say, when you have a pressure of water in the pipe, when you have a pressure of water in a string of pipes where you are using this Exhibit 47 you have in your hand, and the water pressure is against the gasket then the internal portion of the gasket squeezes against the pipe that is inserted?

A. That is right.

Q. And the outer portion squeezes or presses against the inner wall of the sleeve?

A. That is right.

Q. And it presses more strongly or with more force than it did before there was any water pressure in there?

A. Your unit pressure is the same on both the inside and the outside.

Q. Beg pardon?

A. Your unit pressure is the same on the inside flange as well as on the outside flange.

Q. It is the same on both of them?

A. That is right.

(Testimony of E. A. Finkbeiner.)

Q. Now if that outer portion of that gasket were at a greater angularity so that it stood up straighter, wouldn't there still be a back pressure of that water just the same? [224]

A. A back pressure against your flange up here, you mean?

Q. Yes.

A. Yes, providing—yes, you will have your pressure on there.

Q. And it would be equal against the forwardly extending portion around the pipe and it would also have the same pressure backwardly against that portion you hold between your fingers which you term a flange?

A. You mean have the pressure along here as well as on the flange?

Q. Yes.           A. That is right.

Q. And if you had a wall at the top of that flange and down the back of that flange; in other words, if there was no wall at all in front of that flange—in Exhibit 6, is it?           A. 6, yes.

Q. If there were no wall at all in front of that flange and the pressure were the same wouldn't it seal?

A. It probably—it might; it depends on your fit.

Q. Now in all of your experience haven't you ever put in a packing of that kind?           A. Yes.

Q. And it has sealed all right?

A. With pressure on there to hold it.

Q. Yes, with water pressure on there.

A. I mean with mechanical pressure. This flange

(Testimony of E. A. Finkbeiner.)

in here will hold much better if it is compressed to make sure your water [225] is not going over the top. You have got a space around here which permits your pressure to go over the top in the other side of the packing.

Q. That is true in any packing of that kind, isn't it? It is true with a round flange the same as with an angular type flange, is it not?

A. The same with what?

Q. It would be the same in Exhibit 47 that you have there, would it not, that the water could creep between the packing body and the internal wall of the groove? A. It might.

Q. It might there too. Those are mechanical difficulties that would exist in any packing of that type; is that not true?

A. Yes. The construction on this is different from that, though.

Q. You qualified here as an expert in packing, and I am willing to accept your qualifications. Wouldn't that be true with both types of those gaskets?

A. You might get leakage around there.

Q. But the pressure of the water would have the same effect on both of them, of wedging them or pressing them against a resisting wall or surface? A. That is right.

Mr. Graham: May I use the blackboard again?

The Court: Yes, go ahead. [226]

Q. (By Mr. Graham) Now I am not very good at drawing, but I will do the best I can. You are



(Testimony of E. A. Finkbeiner.)

fairly familiar with drawings and I presume know what cross sectioning means?

A. That is right.

Q. As I have drawn the sketch on the board here that would be approximately a cross section of Exhibit 6 that you have here? That would be true, would it not? This portion would be the sleeve and this portion would be the gasket?

A. That is right.

Q. Now if you take off the corner of that—you say that that is a flange? A. All right.

Q. As I originally drew it it had a flange. Now if you round the corners of that you would still have a flange, wouldn't you, if you made your metal casing to fit there? A. I think so.

Mr. Graham: Does your Honor understand what I drew?

The Court: Yes.

Q. (By Mr. Graham) You would still have a flange if that was a groove of that type, wouldn't you, instead of a square groove? A. Yes.

Q. And when you round your corners here to fit that groove you don't change the character of the object, do you? A. Just in shape is all.

Q. Just in shape; but it is still a flange, that circular sur- [227] face? A. That is right.

Q. All right. Then do you change the complete character of it if you cut a little piece out of there?

A. Absolutely; you bet.

Q. What remains of this portion here?

(Testimony of E. A. Finkbeiner.)

A. Well, you make a V or U type packing out of it.

Q. Forget the names. You don't have to call them by name. I am asking you about the character of that. Doesn't it still have a flange on it?

A. No, no.

Q. What do you call this?

A. When you cut that down in there you change the characteristics of that altogether.

Q. In other words, if that remains around there like that—we need not take the V-type or U-type or anything else.

A. All right.

Q. —when you cut that down to a round surface there you admit that that is a flange?

A. All right.

Q. All right. You put a slit in there, does that change the character of it?

A. Absolutely.

Q. By just putting a slit in there?

A. That is right. [228]

Q. It changes the character of it?

A. Yes, sir.

Q. What happens back here? Do you change the character of that?

A. What happens there is when you have that slit in there your water pressure is allowed to go in between there and it opens up your flange.

Q. It opens up the flange?

A. It comes back to a V-type.

Q. You mean to say that it opens up the flange so as to let the water in?

(Testimony of E. A. Finkbeiner.)

A. The pressure goes in there and expands that flange.

Q. Expands it here?           A. That is right.

Q. If there is an opening here?

A. That is right.

Q. So that you would say, then, that that was a flange with a V opening in it?

A. All right. You can call it that.

Q. Well, isn't that structurally what it is?

A. Well, of course——

Q. You are an engineer. I am just asking you isn't that flange still there and hasn't the flange got a V in it?

A. Well, you are changing the structure——

Mr. Middleton: Just a minute, Mr. Graham. Let the witness answer. [229]

Mr. Graham: I am asking just a simple question.

Q. I am asking if you have removed the flange. Isn't it all there structurally?           A. Well——

Q. I am not asking you "well"——

The Court: He hasn't finished. Give the witness a chance to finish his answer. He may start "well" or any way. Go ahead and answer the question.

A. When you put a slit down in there you change the characteristics of the shape, and as applied to gaskets you allow the pressure to go into your slit there and it makes a V-type gasket of it.

The Court: Do you change the function in any

(Testimony of E. A. Finkbeiner.)

manner, the function or performance, the manner of performance?

A. Sure, your performance is different because you have got a V-type in there, which makes the gasket perform altogether different than it did before.

The Court: What is the difference?

The Witness: May I step over there?

The Court: Certainly. Improve on his drawing if you can.

A. (Illustrating on blackboard) When you open up this flange here the pressure comes in there and it has a tendency to bend that back, and what you have really is a V-type gasket, which you don't have in a solid piece.

Q. (By Mr. Graham) In other words, if you have got this backed [230] up with metal——

A. Well, it is backed up with metal in any case.

Q. And you say that this then spreads up here?

A. Sure; that opens up. That is where you get your V gasket out of the thing.

The Court: I don't understand this opening up. The pipe passes beyond that.

A. No, your pipe is down here.

The Court: What?

A. Your pipe is down here.

Mr. Graham: This is the sleeve, if your Honor please. The pipe would go through here. The inside pipe, the unthreaded pipe, would go through here.

The Court: All right. Well, pressure in the in-



(Testimony of E. A. Finkbeiner.)

side pipe, doesn't that close the two parts of the V shape?

A. Your Honor, when you get pressure in there—excuse my back—the tendency is to shove this down and seal this pipe around here.

The Court: All right.

A. When you have got pressure—when you have got a slot in here the pressure is going to go in there and tend to open that up and seal this up here, the same as you have got in a V-type gasket. In other words, it makes a V-type gasket out of it.

Q. (By Mr. Graham) And presses it up here pretty tight, doesn't [231] it, if you have got reasonable pressure?

A. Depending on your pressure.

Q. Well, what pressure do you use, say, in irrigation?

A. Oh, it varies. It varies on irrigation.

Q. What is your experience?

A. Well, over in Idaho they go up to five or six hundred feet. In various parts of the country around here in the Willamette Valley it is all low head pumping.

Q. Thirty or forty pounds?

A. Oh, they have a lot of it that is five or ten pounds. Along the river where the valley is flat they don't get much pressure in pumping projects down there.

Q. Then under low pressure that would not open up and under high pressure it would open up?

A. It would open up under any pressure.

(Testimony of E. A. Finkbeiner.)

Q. When it does open up it correspondingly seals against this circumferential groove up there?

A. It raises this up here and your seal would be up here, you see.

Q. Your seal would be up here?

A. That is right.

Q. It would press this upper portion above the slot against the top wall of the groove and it would press the back wall of the gasket against the back wall of the groove?

A. Well, you are going to have—theoretically, what happens is [232] your pressure comes in here and your pressure opens up and the tendency is to open that up radially.

Q. Your tendency is to open it up radially, yes. But when that opens up radially you get an increased pressure up over the top of your groove and you also are having presented to the pressure a wide area of this member to get the pressure back against this back end of the groove, don't you?

A. Well, when you get your pressure in here that throws that out radially.

Q. Yes, you have said that several times.

A. And it does not tend to throw it this way, but you have got an unbalanced pressure here which may throw it in this way. If you made a cut like this the chances are it would blow out.

Q. You mean I have got too much space here?

A. That is right.

Q. Well, I can accommodate that all right.

The Court: Recast it now.

(Testimony of E. A. Finkbeiner.)

Mr. Graham: I said I wasn't very much of a draftsman.

Q. But there would be pressure back this way against this wall?

A. Well, I think what happens there is this clamps on here and this clamps up there. You see, you have got your pressure in here which clamps onto that pipe, and there is a lot of friction there that holds that. In the same way you go up here and you get friction up there. There would be your points of opening up here and down along here (indicating on blackboard). [233]

Q. I see. You get frictional holding along here; is that the idea?

A. Well, you would get it coming over to here, yes. You can't get it over there because here is where she bends in here, where you get pressure on the inside.

Q. And then the other holding would be frictional pressure up here at the top?

A. No, in here at the mouth of your slot and a little straight up.

Q. So that you would get a frictional pressure up there at the top, then?

A. At the top, due to forcing that out.

Q. And that frictional pressure would hold the gasket in that annular groove?

A. That holds that there, yes. It holds it tight. It makes your seal.

Q. Now if you cut off that corner there you

(Testimony of E. A. Finkbeiner.)

would get your pressure back here, wouldn't you, against that wall?

A. You mean cut that corner off entirely?

Q. Yes. I kind of mauled that one up. Let's start on the other end. Now we have got our casing all connected up again. Here is your casing and here is our flange (illustrating on blackboard). Now if we cut that wall off there, cut the casing off there, you would get a back pressure against this flange here, wouldn't you? [234]

A. You mean just cut off this corner all the way around?

Q. Yes, just cut it off.

A. And leave this open here, or is this open all around here (indicating)?

Q. I don't want to draw one line on top of the other. That is supposed to fit.

A. All right.

Q. You cut off that corner that I have indicated in white. A. All right.

Q. You would get back pressure against the flange of the gasket or packing member, wouldn't you?

A. Yes, if you had water pressure on there, or whatever it was.

Q. And that would force that back against the back wall and make a seal?

A. Well, of course—that is theoretical, yes. If this is not a good fit around here, though, your water is going to run around here and you will have pressure on both sides.



(Testimony of E. A. Finkbeiner.)

Q. Well now, would not ordinary mechanical skill and intelligence dictate that you make a tight enough fit there to prevent water going through for the purpose of a packing?

A. Yes, but your gasket is not a machine fit.

Q. Wouldn't that happen with this type of gasket that you have shown around here? Wouldn't the same thing happen there? A. It would.

Q. If it did not fit it would leak? [235]

A. It could if it was made like that.

Q. Isn't that right? If it did not fit it would leak and if it did fit it would not leak?

A. No.

Q. So that the same would apply down here; isn't that a fact? A. That is right.

Q. If you get pressure back here you would get a sealing against the wall here, wouldn't you?

A. Of course, understand I would not recommend a section like that.

Q. I say, I am not a very good draftsman.

A. But I mean that is not a good section for a gasket. You taper this off here to get—the purpose of a gasket—you taper this off so it fits, and the same way out here, and the idea is to get the pressure back of that and it is flexible and holds it out; holds it out and in——

Q. In other words, if you were going to make the gasket yourself you would make the free circumferential part around the unthreaded pipe and thinner relatively?

(Testimony of E. A. Finkbeiner.)

A. Relatively thinner, and the same way on the top.

Q. You would make the top relatively thinner, but mechanically it would function in the same way but in a different degree? A. Well——

Q. Better, but the principle of operation would be the same?

A. Well, you could hardly call that a proper design, because [236] what you have got there is just a big lump, and you cut a slot in it, and that is not the way to get a gasket. What you want to get is a thin member out here the same way.

Mr. Graham: I don't know what the exhibit number is, your Honor, that I want.

The Court: Which one do you want?

Mr. Graham: It looks like the one that has the section cut out of it.

Q. Now referring to the exhibit that you have in your hand, which I believe is Exhibit 81——

A. 81-B, yes.

Q. When that gasket is in operation with that pipe there there isn't any V in it, is there?

A. No V?

Q. Yes.

A. This seems to show a very distinct V to me.

Q. You mean that slit? A. No, in here.

Q. You mean that slit? A. Yes.

Q. It is closed, isn't it? A. No.

Q. What? A. No.

Q. How wide is it open? [237]

A. Oh, on the outside an eighth of an inch.

(Testimony of E. A. Finkbeiner.)

Q. Will you let me look at the exhibit. At the outer wall it is open about an eighth of an inch; is that right? A. That is right.

Q. At the rear of that opening it is a mere slit?

A. That is right.

Q. How far back is it open an eighth of an inch?

A. Oh, that runs back there, starting at an eighth of an inch, it tapers back about a quarter of an inch.

Q. About three-quarters of the gasket there is simply a slit, isn't it?

A. Without any pressure, yes.

Q. Yes. But that gasket was opened wide in Exhibit 4, wasn't it? A. You mean here?

Q. Exhibit 4, what you spoke of as the V in the gasket is open wide, isn't it?

A. That is right.

Q. And when the pipe is inserted in there that is no longer a V, is it? A. It is still a V.

Q. You call a slit a V?

A. No, I don't call it a slit because it is a perfect V right there on the edge of that for a quarter of an inch.

Q. Just on the edge?

A. Back for about a quarter of an inch. [238]

Q. And the entire rest of it is all slit?

A. Well, let's see. I don't know whether that is open or not. My eyes aren't good enough for that. Well, I would not say it was closed.

Q. But it is such a small opening that you have to take your knife blade to even feel it or see it?

(Testimony of E. A. Finkbeiner.)

A. It is compressed there, yes.

Q. You insist, then, that that is a V-type of opening?      A. Absolutely.

The Court: Of course, if you move the pipe it opens up automatically wider?

A. It opens up?

The Court: Yes.

A. Yes, it opens up more.

The Court: It is a flexible joint?

A. Yes.

The Court: On the other hand, if you turn it the other way it will open below, it will open on the other side and press tight. If that were immobilized there would be very little of the V left; it would just look like overlapping lips pressed tightly against each other and then the whole against the groove; wouldn't that be correct?

A. If I press it over there fully—if I press that over there as far as I can I still have a little V there, you see. If this one is opened up wider, you see—— [239]

The Court: That is what I was thinking.

The Witness: You see, that groove—the V shape depends on the position of this. If you put it over to one side it opens up pretty nearly down to the bottom. If you center that pipe you get a V on both sides.

The Court: If you enlarged that pipe you would probably press it so there would be no V left?

A. Then you would not get it in here.



(Testimony of E. A. Finkbeiner.)

The Court: Then you could not have a loose joint, flexible joint?

A. No, you would not have any flexible joint.

The Court: All right.

Mr. Graham: That is all.

### Redirect Examination

By Mr. Middleton:

Q. The question was asked you, Mr. Finkbeiner, in reference to the U-shaped packing as to what you call the various sides of it or parts of it. Is the U-shaped packing, Exhibit 4 there, made up of two or more parts or is it one entity?

A. Exhibit 4 is made of one part.

Q. Any reference then to various portions of the exhibit or parts of the exhibit is relative only in position; is that right?      A. That is right.

Mr. Middleton: That is all. [240]

Mr. Graham: That is all.

(Witness excused.)

(Short recess.)

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### GEORGE F. McDOUGALL,

a witness produced in behalf of the defendants, thereupon resumed the stand and was further examined and testified as follows:

### Direct Examination (Continued)

By Mr. Middleton:

Q. Mr. McDougall, will you please refer to Ex-

(Testimony of George F. McDougall.)

hibit 81-B, and I will ask you whether or not that Exhibit 81-B has the same structural characteristics as Exhibits 47 and 48 excepting only for the difference in the locking means.

A. As far as the sleeve is concerned it is double, each of which is the full equivalent of the sleeve in Exhibit 47 and 48. There are two pipes with unthreaded ends and one inserted in each of the sleeves so that it is the same as those exhibits except that it is double as to the essential parts.

Q. Except as to the locking means?

A. Except as to the locking means, yes.

Q. And does or does not that locking means in Exhibit 81-B operate hingedly within the meaning of that term as it has been employed in this lawsuit?

A. It does. [241]

Mr. Middleton: You may cross examine.

### Cross Examination

By Mr. Graham:

Q. I believe you testified, Mr. McDougall, that "frictionally held" means resistance to motion.

The Court: Can you hear, Mr. McDougall?

The Witness: I didn't hear that clearly. Especially cross examining questions I must hear clearly. If the reporter will read it.

(Last question read.)

A. No, I said friction is resistance to motion.

Q. (By Mr. Graham) Would you say that a tight binding fit produced a frictional holding?

A. If the gripping effect is sufficient to prevent

(Testimony of George F. McDougall.)

motion under the force applied then it is frictionally held.

Q. And a packing member that was under water pressure in a pipe line would have pressure, would it not, resulting in force?

A. The packing member such as we have been considering in this lawsuit here; that is, the cylindrical portion of the flange packing and both portions of the V packing, when hydraulic pressure is applied to them one expands into contact with the inside wall of the bell and the other is compressed around the pipe, but no friction can occur unless there is relative motion, and if there is a tendency to relative motion then friction will either resist it or yield to superior force. [242]

Q. Now is there any motion in the packing member in the Lanninger patent?

A. There is no motion unless the pipes tend to move longitudinally or axially, and consequently there would be no friction as between the free cylindrical portion and the pipe. And as I explained in my direct examination, the words "frictionally held" are not very apt. It is not misleading, but it should be "grippingly held".

Q. But his intent, then, is that it is held by some means other than bolting?

A. Not necessarily. These exhibits that we have here—you have no exhibits, pardon, but that figure in the drawing that shows that the two parts of the groove are made narrower by screwing together to contain the sides of the flange grippingly,

(Testimony of George F. McDougall.)

now it is still true, I think, to say that they are frictionally held, but you can apply—it is still true to say they are grippingly held, but the change is only as a matter of degree. Where they are tapered and forced in, why, they are held there somewhat like a cork is held in a bottle.

Q. Sort of by pressure?

A. Well, it depends on the taper. If the taper is too much they won't stay at all. When they are pressed in there they are grippingly held, but friction will result only when you try to move them, of course.

Q. You would say that as I hold this pencil between my fingers it [243] is frictionally held?

A. No, I would say it is grippingly held.

Q. Grippingly held?

A. But it means if you take hold of it with your other hand and overcome it with your other fingers then friction results. Friction is resistance to motion.

Q. In other words, if I move this pencil then it is frictionally held?

A. No, it is still grippingly held, but only partially. Friction results—you use just as much power as there is friction at the other end to move the pencil.

Q. But in neither the Lanninger patent nor in Defendants' Exhibits 47 and 48 is there a sliding or longitudinal movement of the radially extended portion, whether you call it a flange or rim?



(Testimony of George F. McDougall.)

A. Not necessarily. But as the pipe lays on the ground when you force cold water into it it will contract. There will be some relative motion. It may be small, but it is there. You can shut the water off, the temperature rises and there will be relative motion again. A motion between two grippingly held surfaces always involves some friction.

Q. Well, that is just more or less theoretical rather than practical, isn't it, in amount?

A. No, it is not theoretical. It is actual enough.

Q. It is what you call thermal expansion and thermal contraction? [244]

A. Thermal contraction or thermal expansion has the same effect, as far as it goes, as taking hold of any chain and pulling it——

Q. Now that makes it move radially inwardly and radially outwardly, does it not?

A. That has no effect on the radial characteristics of the packing. Any longitudinal movement would not have any effect on the packing itself as to making it expand or contract.

Q. But it is not a function of the packing member in either case——

A. I didn't hear you.

Q. It is not an operative function of the gasket in either case, either of the patent or of the defendants' devices, to move longitudinally?

A. It is not a function in the sense that it is a desirable mode of operation, but it is one of those necessary things that are going to occur anyway and you can't prevent it to a certain extent.

<sup>1</sup>(Testimony of George F. McDougall.)

Q. Did you, Mr. McDougall, write the Pierce patent application that resulted in Patent No. 1,945,293?

A. I don't recall the number. If I did, why, you will find my name signed under the drawing.

Mr. Graham: I am offering the Pierce patent, Defendants' Exhibit 22, in evidence for the specific purpose of impeaching the witness; not for the purpose of anticipation or showing a patentable difference, for which it was excluded previously.

(The copy of Patent No. 1,945,293, Ralph H. Pierce, [245] so offered, having been previously marked Defendants' Pre-Trial Exhibit 22, was marked received as Plaintiffs' Exhibit 22.)

[Printer's Note: Plaintiff's Exhibit No. 22 is set out in full at page 387 of this printed record.]

Q. Will you please refer to Exhibit 22, the Pierce patent.

A. Yes. I have the patent and the drawing bears my signature.

Q. You prepared the application?

A. Yes, sir.

Q. Now is the packing member in Exhibit 22 which you have in your hand substantially similar to the packing member in Defendants' Exhibits 47 and 48?

A. In principle it is the same thing.

Q. Now will you please read column two beginning at line 84 of Exhibit 22.

(Testimony of George F. McDougall.)

A. Give me those figures again.

Q. Column two, beginning at line 84.

A. Beginning at line 84, beginning about the middle of line 84?

Q. That is all right.

A. "The cup-rubber pocket, 5, will have an internal surface that is an arc of a circle, preferably somewhat less than a half circle. The cup-rubber, 8, is shown in Figure I to hug the inside of this circular arc closely but it is not molded on that part of its surface to a uniform circular outline. That part of it, shown in Figure III and designated by the arc, A, is made to a longer radius than that part of it designated by B, the arc B being made to the same radius as the inside of the [246] cup-rubber pocket, 5, will lay in the pocket very smoothly, while that part represented by the arc A requires some compression and therefore the lip, 8a, is bent down as shown in Figure I and tends to make a preliminarily tight joint at this point while pushing the arc A firmly to its seat." Is that far enough?

Q. Yes. Then the outer and arcuate portion of the packing member——

A. I am having difficulty in hearing you.

Q. Then the outer arcuate portion of the packing members in Exhibits 47 and 48 are formed each half in a different radii?

A. Yes, there is a composite arc.

Q. And that is for the purpose so that one portion will push the other portion firmly to its seat?

(Testimony of George F. McDougall.)

A. If I can have this section here I can show you precisely what it means, because it actually—these rubber packings are made just that way.

Mr. Graham: May we use a whole packing there, if your Honor please? We have got an exhibit there of a whole packing.

Q. Can you use a whole packing for that?

A. You can't use a whole packing for it very well because you can't see inside, I don't think. If we put this packing in here, in this cup-rubber pocket, as it is called in the patent specifications, you see it distorts because it is a little bigger than the pocket. It is made that way purposely so that it ex- [247] pands tightly into place. You can't get a view of it, you see.

Q. Then the packing member that is made for that bell, as you call it, is made larger than the diameter of the bell? A. Slightly larger.

Q. So as to make it tightly fit in the seat?

A. So it makes a tight fit in there. It compresses slightly in putting it in. Now if we take this three-quarter member,—I think that will do,—that, on the other hand, is distorted by having a piece removed from it so that you don't get the effect with the sectioned piece. And we will take the bell half of Exhibit 47, I think it is, and by removing the unthreaded end of the pipe, or the blank pipe, and looking up in between, into the V, it can be seen that the outer edge corresponding to the section that I am laying my finger on here in this piece hugs the wall, the inside wall, of the



(Testimony of George F. McDougall.)

bell tightly. That is the purpose of making those of a composite arc as described in the patent, so that it is initially tight. When water comes in there as practically zero pressure, we will say, when the pipe fills half full, there would not be any pressure in there but it still will not leak. I think I have answered your question.

Q. Pardon me. Were you going to say something else?      A. Beg pardon?

Q. Were you going to say something else?

A. No, I say I think I have answered your question. [248]

Q. The packing member is originally made a little larger than the annular recess in the sleeve?

A. The specifications say that the cup-rubber, 8, shown in Figure I is fashioned to hug the inside of the circular arc closely. That was the intention, that it should not necessarily be measurably larger, but it should be a good snug fit. The easiest way to do that would be to make it just a trifle larger, of course.

Mr. Graham: May I illustrate a point on the board here, your Honor?

The Court: Yes.

Q. (By Mr. Graham) Then you make the arc of the sleeve concentric to a point?

A. I don't know whether he did do that. It is shown that way in the drawing. But I have never checked one of these, and I don't know how they are actually rolled.

(Testimony of George F. McDougall.)

Q. But that is the intent, isn't it? They try to do that?

A. I think so. I have never conferred with them about it.

Q. Then which is the arc of longer diameter, that one or this one (indicating on blackboard)?

A. You are talking about the——

Q. The sleeve. This is the sleeve.

A. The sleeve?

Q. That is the sleeve.

A. That doesn't show that sleeve. It says the rubber.

Q. Yes. Then the rubber member comes in here (indicating). [249]

A. Yes, the rubber member comes inside there. That is a very good designation of it.

Q. Something like that (indicating on blackboard).

A. It is disproportionate. Your drawing is very disproportionate, but in principle——

Q. Yes. Now which of these arcs is the larger, that arc or this arc?

A. The forward arc; that is, the one nearest to the edge of the V is the one with the longer radius.

Q. That has the longer radius? A. Yes.

Q. When you say that one portion presses the other portion to a firm fit you mean that this portion here of the arc with the larger radius presses this portion of the arc having the smaller radius against——

A. No, that is not what it says.

(Testimony of George F. McDougall.)

Q. What does it say?

A. What it does say is that this lower leg of the V here extends down into the pipe somewhat. That is shown at 8c in Figure I of the drawing.

Q. Will you point to the lower leg of the V.

A. (Indicating) Yes, that extends down into the pipe. Now when the pipe is inserted it finds an opening here a little bit like that, so that this being a long radius it perhaps touches here, but not in the center; and then when you push the pipe in [250] it forces that up in and closes that circle so that they are concentric.

Q. And that arc being larger has more pressure against the wall of the sleeve?

A. No, the purpose of making that in that way is to have an initial seal of the lip against the wall, the inside wall of the bell, so that it will be tight at zero plus, a very small fraction of pressure.

Q. In any event, this arc, whether it be a single radius or double radius, fits snugly into that arc you have formed there, whether you call it a bell or a groove?

A. Under pressure it does, yes.

Q. When the pipe is inserted this lower lip, as you call it, is pressed up so that it presses that arc more tightly?

A. It tends to close it, yes.

Q. Against the sleeve?

A. Yes.

Q. Now you have testified to prior art patents that antedated the Lanninger patent.

A. I remember some of it, yes.

(Testimony of George F. McDougall.)

Q. Now in drawing the Pierce patent, Exhibit 22, will you read what you said relative to the problem and the art? A. Relative to what?

Q. Relative to the problem and the prior art, at column one, line 15. [251]

A. "The problem here involved is many years old and many attempts have been made to solve it; a very successful coupling so far as tightness is concerned is made on the stuffing box principle having bolts to tighten a rubber ring and compress it around the pipe. It is, however, expensive to build and difficult to properly tighten in a trench." Is that far enough?

Q. Now read down to line 30.

A. Line what?

Q. Read down to line 30.

A. Very good. "Before my new invention, so far as I am aware and as I believe, all joints heretofore made by cup-rubbers, to coin a word, that is to say rubbers that depended upon the internal pressure of the contained fluid to make them hug the pipe, have been commercial failures for the reason that if the cup-rubber was made enough smaller than the pipe it was to encircle so that the original grip of the rubber on the pipe would result in a tight joint then it was practically impossible of assembly in the field, and conversely if made so that the pipe could be readily inserted within it in the field, then it would invariably leak until the pressure reached a very considerable



(Testimony of George F. McDougall.)

amount and began to have its effect toward making the rubber grip the pipe.”

Q. Then there was a very decided problem to overcome at that time? [252]

A. You must remember that that material is always furnished to the patent attorney by his client, the man who has done the inventing. He is the man that knows what he invented. He is compelled to tell what it is. And while the language may not be precisely his, the thought always is if a patent attorney does his duty. Just how that particular paragraph came to be written I don't recall at this time, except as to my general practice, that it follows the instructions of my client in every case.

Q. Yes. And you used the term “cup-rubber” in here, did you not, for the packing member?

A. Beg pardon?

Q. You used the term “cup-rubber” in here for the packing member?

A. Yes.

Q. You don't call it a U-packing?

A. I didn't there, no.

Q. You don't call it a V-packing?

A. I didn't there, no.

Q. You call it a cup-rubber?

A. Yes. That was also a term that was furnished by my client. I used his language so far as it was apt.

Q. And he furnished that to you?

A. Yes.

Q. And you furnished it in the patent?

(Testimony of George F. McDougall.)

A. Yes. [253]

Q. Well now, doesn't the Lanninger patent speak of the gasket or packing member——

A. Will you please speak a little louder?

Q. Doesn't the Lanninger patent speak of the packing member as a cup-rubber?

A. It may or may not. I don't recall.

Q. Now you testified that the Lanninger patent had a flange clamped in the groove of the sleeve.

A. Will you speak a little louder?

Q. The Lanninger patent, according to your testimony, has a flange clamped in the groove of the sleeve.

A. Has a flange that extends into the groove of the sleeve, yes.

Q. You testified that it was clamped.

A. What?

Q. And you testified that it was clamped?

A. It is shown clamped.

Q. In one of the figures it is shown as clamped?

A. Yes.

Q. In all the other views it is shown not clamped; is that correct?

A. I believe that is correct.

Q. Would it help you to have the Lanninger patent handed to you?

A. I might also add that I questioned the success and utility of those where it is not clamped.

Q. Now in all of the other figures except Figure 3 it shows a packing member held without being clamped, does it not? [254]

(Testimony of George F. McDougall.)

A. Well, in Figures 2 and 5 it doesn't show how it is held. Those are cross sections.

Q. Yes.

A. But in Figures 1 and 4 the packing apparently fits into a groove.

Q. Then in his drawing he indicates two ways of holding the packing in there?

A. In the drawing he does indicate two ways, yes.

Q. And he states in column 2, line 85, that the packing could be adjustably mounted in the sleeve by means of clamping the two parts on it; is that correct?

A. It doesn't read just that way. "The packing 'b' could be adjustably mounted in the casing 'a' as shown in Figure 3. In this case the sleeve and neck are composed of two parts 'a', 'a<sub>1</sub>' between the adjacent threaded ends 'p' of which the flange 'b<sub>2</sub>' of the cup shaped packing is clamped."

Q. In other words, it could be fixed that way?

A. Yes.

Q. But that does not mean that it is the only way?

A. Oh, certainly not. That was just my opinion, that it was the only successful way.

Q. I believe you testified that Defendants' Exhibits 47 and 48 did not have an internal annular groove; is that correct?

A. Did not have an internal annular groove?

Q. Yes. [255]

A. I testified that they did not have an internal annular groove in the sense that the term was em-

(Testimony of George F. McDougall.)

ployed in the Lanninger patent. That was qualified in that way.

Q. But it has got an internal annular groove?

A. It is not a groove.

Q. In one sense?

A. Well, it is an internal annular bead of a substantially semi-circular section.

Q. Under no circumstances would you call that an internal annular groove?

A. It could be called a groove, yes, and still be correct; but it is not a groove in the sense that the word "groove" is being employed in this lawsuit. I made that distinction for that reason.

Q. Now you prepared the claim in the Pierce patent, didn't you?

A. I prepared the claim in the Pierce patent, yes.

Q. And prosecuted it through the Patent Office?

A. Yes.

Q. Now will you read the first few lines of that claim.

A. "In a pipe joint, a sleeve member, an annular internal semicircular section groove in said sleeve member."

Q. A semicircular section of a groove?

A. Yes, yes.

Q. And it is internal?

A. Yes, it is internal. [256]

Q. So that wouldn't you concede that that was a groove?

A. That is still true, but as I pointed out to you just a moment ago, I made that distinction in my



(Testimony of George F. McDougall.)

direct testimony that these two exhibits did not have a groove, an internal annular groove, of the kind and type meant in Lanninger, which is a rectangular cross section. I wished to make that distinction and do yet.

Q. Now the devices of Exhibits 47 and 48 are made of thin metal, aren't they?

A. Thin metal?

Q. Thin sheet metal?

A. Yes, apparently they are. I think they are made of seamless pipe.

Q. They are made by a process of swaging, aren't they, with rollers?

A. I never saw them made. I don't know. I understood they were made by rolling.

Q. By rolling the metal? A. Yes.

Q. Into shape; what some people call spinning?

A. Beg pardon?

Q. What some people might call spinning metal?

A. No, it is not spinning. I don't know what it is. As I say, I never saw them made.

Q. Well, it is not cast, anyhow?

A. It is not cast. [257]

Q. It is formed metal rather than cast metal?

A. Yes; I think cold worked metal would be a better word.

Q. You could not make the Lanninger groove by rolling or forming the metal that way, could you?

A. Well, it would be a brave man to say you can't do anything in metal working nowadays. I have never seen it done, but I doubt it.

(Testimony of George F. McDougall.)

Q. You have never seen a groove with those sharp angles spun in mass production?

A. I have never seen it done, but they do some surprising things nowadays in metal work, and I wouldn't be brave enough to say that it could not be done.

Q. As an engineer, in order to make this out of thin gauge metal for commercial production, making it cheap, you have got to have a larger groove comparatively than shown in the Lanninger patent?

A. Not necessarily. The size of it doesn't cut much figure.

Q. You could roll and shape an annular groove like that or form it out of thin sheet metal?

A. I don't know, but I say I would not say it could not be done.

Q. As an engineer wouldn't you know that?

A. What?

Q. Wouldn't you know whether you could spin out sharp angles of that type or swage them out?

A. I know that modern metal work, which I have not been directly connected with for the last several years, has made such advances that my opinions as to what could be done and what could not be [258] done would not be of any particular value.

Q. Yet you testified that that is not a groove in the meaning of the Lanninger patent?

A. I did; yes, sir.

Q. But you don't know what purposes may have prompted them to make——

A. Beg pardon?

(Testimony of George F. McDougall.)

Q. You don't know what purposes of manufacture or necessities of manufacture may have prompted them to make this groove larger?

A. You mean the one in——

Q. In Exhibit 47?

A. Oh, well, that was made larger purposely, to carry a U-section packing or a V-section packing, as you might call it. They are both the same thing.

Q. You don't use the same term as the Pierce patent, I notice.

A. What?

Q. You don't call that a cup rubber?

A. Cup rubber is not the technical name for it, but what it is is a V packing. What is actually used is a V packing. That was a good many years ago, when that "cup-rubber" was put into the patent, and its origin has escaped me.

Q. You testified that in order for a member to be a flange on a packing it must be held by metal?

A. It must be what?

Q. It must be held by metal; isn't that what you testified? [259]

A. In order to be useful it would have to be. I don't remember that testimony, but I am willing to say now that in order to be useful the flange must be held between two metal surfaces.

Q. For the purpose of the question let's call that internal annular recess a groove.

A. All right.

Q. Hasn't it a forward wall and a rearward wall?

A. I understand what you are driving at. Yes, sir.

(Testimony of George F. McDougall.)

Q. I say, that so-called groove has a forward wall and a rearward wall? A. That is correct.

Q. And it has a top wall? A. Necessarily.

Q. And doesn't the radially outer portion of the packing member in Exhibits 47 and 48 fit in between that forward wall and rearward wall and top wall?

A. Well, the top wall and the forward wall and the rear wall are all one thing in Exhibit 47. It is just the arc of a circle, a little less than a half circle, I would take it from looking at those exhibits. You can't distinguish where one portion begins and the other one leaves off. It is just an arc of a circle.

Q. But there is a rearward wall?

A. There is a rearward portion.

Q. And a forward portion and a top portion?

[260]

A. And a top portion.

Q. And there isn't any angle between?

A. There is no angle between them; that is correct. They are arcuate and I think a continuous arc through a single radius for it.

Q. Now with regard to Exhibit 47, which you have right there, I believe you testified that that was a bayonet joint.

A. That is a common designation for that type of joint. It is called a bayonet joint. It originated, as I understand it, because originally the old bayonets were fastened onto a gun in that way. They were inserted and they turned them down. Some of them had two motions.



(Testimony of George F. McDougall.)

Q. But bayonets fastened on the end of a gun were provided with a rigid lock, were they not?

A. They had a locking means.

Q. They did not have flexibility?

A. They had a rigid locking means independent of that. But this type of a joint, where you insert one part, such as a hook, through a notch and then turn it relatively to make them inseparable longitudinally, they are always called bayonet joints, and the degree of the fit hasn't anything to do with it.

Q. But the bayonet joint does not provide flexibility of the two members of the joint?

A. The original bayonet joint rifle did not, but I am just telling you that for your information; that that type of joint is always [261] called a bayonet joint and that is irrespective of the fit.

Q. But it is something more than a bayonet joint because it provides relative movement of the axis; it permits relative movement of the axis of the two pipe members, does it not?

A. This one does, yes, this particular one. Exhibit 47 does not impair the movable parts because it affords more lost motion than is found between the blank pipe and the bell, and still it locks it against separation.

Q. Yes. It secures them against coming apart under pressure of irrigation; is that it?

A. Yes.

Q. Do you know, Mr. McDougall—this is not cross examination, but I am asking for the information of the Court—

(Testimony of George F. McDougall.)

The Witness: A little louder, if you please.

Q. I say, this is not cross examination. I am asking for the information of the Court. How long are the pipes that they hook onto the end of these coupling members?

A. Oh, the standard length of pipes?

Q. Yes.

A. I don't know, but a good many feet, ten or twelve; maybe sixteen or twenty; I have no idea. But they are naturally as long a pipe as a workman can conveniently handle, because pipe costs less than couplings.

Q. They are quite long?

A. Oh, yes, quite long pieces. [262]

Q. Approximately how much swing would it give to the opposite end of the pipe when you had this kind of a coupling like Exhibit 47?

A. Well, that is merely a problem in angles. Now if that has about a three-degree angularity there, which it looks like it had, why, if the pipe was 12 feet long there would still be that three degrees, but the sine of that angle would be longer than the sine of a 10-foot length of pipe and shorter than a 16-foot length of pipe. It is the sine of the included angle. If you wanted to go around a circle you could pick out shorter pieces of pipe.

Q. I am not much of an engineer. May I ask you whether in the average length of pipe, we will say 16 feet, you do allow a lateral swing of 3 feet or 4 feet?

A. Not in one length, I don't think.

Q. Approximately how much would it be?

(Testimony of George F. McDougall.)

A. Well, I would have to have a slide rule or something here to figure it up.

Q. That is all right. Thank you. Now referring to Exhibit 49 and also referring to Exhibit 70, have you ever tried the devices similar to Exhibits 49 and 70 in operation?

A. Have I ever seen them?

Q. Yes.           A. No, sir.

Q. Have you ever tested them under pressure?

[263]

A. No, sir.

Q. Then your testimony this morning as to how they would operate is merely based on your expert opinion?           A. That is correct.

Q. You testified relative to the Gorter patent, Exhibit 32, No. 580,084. Here is an enlargement of it. Have you read the description of that Gorter patent, Exhibit 32?

A. Some time ago I did.

Q. Now is there any description in the specifications of the Gorter patent that mentions any flexibility or hingability of the joint?

A. Is there any such thing there?

Q. Yes.           A. I don't know.

Q. In the description?           A. I don't know.

Q. Could you refer to the Gorter patent, Exhibit 32, and tell us?

The Court: Is there a question pending?

Mr. Graham? Yes, your Honor. I wanted to know whether there is anything in the Gorter patent

(Testimony of George F. McDougall.)

which discloses any hinged relationship of the two portions of the pipe shown in the drawing.

A. (Referring to exhibit) I don't find anything.

Q. And from the drawing it is perfectly apparent that it is a rigid joint so far as lateral movement from the axis is concerned?

A. That, however, is a matter of degree, you know. Any joint that is insertable in another joint necessarily has a degree of lateral play. It may be made very close where it is not required. We have two examples of Lanninger here. I don't know who made them. This one shows almost no lateral motion at all.

Q. Which one shows no lateral motion at all?

A. That is marked 49-A, and then you have one marked 70, and it has a very considerable lateral motion in almost all directions. That, however, is merely a matter of degree.

Q. Now coming back to the Gorter patent, it is shown as a tight fitting joint of metal to metal contact, isn't it? A. What is it?

Q. I say, coming back to the Gorter patent it shows a tight metal to metal contact?

A. Where?

Q. Of the parts in the drawing. Take Figure 1.

A. Well, of course there is always metal to metal contact. There is metal to metal contact in any of these. You say that one is a smooth fit or a running fit or a loose fit or a tight fit in respect to the cylindrical members.

Q. Let me change the question. How would you



(Testimony of George F. McDougall.)

describe the fit between the two pipe members in Figure 1 of the Gorter patent?

A. I would not undertake to describe them because the drawing [265] contains no dimensions and the specifications say nothing about it. However, taking the use of it, it is intended more for a swivel joint than anything else, and I would say they probably made it a running fit.

Q. What do you mean by a running fit?

A. One that will turn smoothly without any particular chatter or vibration.

Q. That is, rotate on its axis?

A. Rotate radially on its axis.

Q. And not move laterally relative to the other pipe?

A. Not probably to any considerable extent. That, however, is a question of purpose, Mr. Graham, and degree.

Q. And the patent of Gorter did not have that purpose; is that the idea?

A. The fact that Gorter didn't say anything about it would indicate that he didn't attach much importance to it.

Q. Now I understood you to testify relative to the Anderson patent, No. 811,812, Exhibit 40——

A. I have the patent now.

Q. ——that it related to standpipes for railways.

A. Yes.

Q. Now is the manner of use of a standpipe for railways the same as it is in irrigation for showering crops?

(Testimony of George F. McDougall.)

A. In one case you irrigate the ground and the other the locomotive tender, but you are conveying water through it. To that extent [266] it is similar. I heard Mr. Finkbeiner testify to something I was not familiar with as to the pounds of pressure used in irrigation. They are much lower than I thought they would be. And I know that when they open up one of those standpipes, which I have seen done many times, usually the water comes down out of the tank that extends up—the bottom of it probably 20 or 25 feet above the ground—you pull the valve wide open and I should say there would be three or four pounds, possibly, pressure to the square inch there.

Q. It is all a downward flow, isn't it?

A. What is it?

Q. It is always a downward flow?

A. No, no; on the contrary it is not. The flow is practically always upward. The pipe comes down to the ground and is laid underground probably to a convenient point alongside the track,—you see that very clearly illustrated in Figure 1 of the patent,—and then the pressure comes up, comes up with considerable velocity, and then it turns at right angles, which would produce a measurable pressure indeed on that flexible joint.

Q. However, when the pipe is in use and that water comes up there is no back pressure on that water, is there?

A. How do you mean, back pressure?

(Testimony of George F. McDougall.)

Q. Well, it has ceased its upward movement when it strikes the packing member in the joint, hasn't it?

A. If you will notice, those pipes are all tapered, and this [267] one is shown tapered, and it is shown to have a nozzle at the end of it that makes a 90-degree elbow. Whenever they throw those big valves wide open there is considerable pressure there. There may be two or three or four pounds pressure. It is a measurable pressure, in any event, comparable to the pressures Mr. Finkbeiner said they used in this spray irrigation; perhaps lighter, but it is a pressure, nevertheless.

Q. What do you mean? Comparable to which figure? I believe he expressed something like as low as 10 pounds in some places around this territory and as high as 80 pounds in other places.

A. Well, I know, but I thought I understood him to say in places they used three or four pounds. I might have been mistaken. But there could easily be more than 10 pounds on this from hydraulic shock, you know, when you throw that valve open and the water starts up there and begins the right angle turn. The hydraulic shock would run the pressure as high as 25 pounds without any trouble at all.

Q. Now I refer you to Figure 4 of the patent. Figure 4 refers to an enlargement of the right angle joint in Figure 1, does it not?

A. That is correct.

Q. In Figure 4 of the patent there is a little

(Testimony of George F. McDougall.)

gasket in the end of one of the pipe members, isn't there?      A. Yes, that is right.

Q. Now is that held in its groove by the pressure of the water? [268]

A. No. I thought it was in a groove and so stated at one time, and then I corrected it afterwards. I think you will find that it is not precisely a groove. There is a hook there and a seat for a U-section gasket. It looks to me like the gasket is held in place by a wire rope, or something, that is around in the bottom of it.

Q. Now look at Figure 11. Isn't that a cross section of the gasket?

A. Figure 11? I don't find Figure 11.

Q. It is up at the top of the page.

The Court: Figure 11, next to Figure 3.

A. That is a cross section of the gasket and it is a section showing a broken away part. That member that holds it in there is a wire spring.

Q. (By Mr. Graham) So whatever that groove is, it is held in there by mechanical means?

A. Yes, it is held in there—no, it is held in there by mechanical means, but the sealing effect is entirely hydraulic. That is just to hold it there so it won't fall out.

Q. Well then, what would you say was the purpose of that plate in Figure 4 that extends across the end of that pipe?      A. What?

Q. What would you say was the purpose of that plate in Figure 4 which extends across the opening of that pipe?



(Testimony of George F. McDougall.)

A. I don't see any plate that extends across the opening of the [269] pipe.

Q. Well, I admit it is rather small but would you look at it with your glass and tell us if there is not a plate across the opening of that pipe without any number on it?

A. I can see everything that is on the drawing there. I can't see any plate across the end of the pipe. You know, if you cut a pipe in two you can see a circular line on the other half which will appear as a straight line when you are looking at it in projection.

Mr. Graham: The drawing is rather small. May I point out what I mean to the witness, your Honor?

The Court: Beg pardon?

Mr. Graham: May I point out what I mean to the witness?

The Court: Yes.

Mr. Graham: It has no number on it (indicating).

A. Oh, that is not a plate across the end of the pipe. That is the other side of the pipe, the same as this line at the end represents—this pipe is in sections.

Q. All right. Then what is the bolt in that member?

A. What is the bolt?

Q. Yes.

A. I don't see any bolt. I don't know (examining exhibit with magnifying glass).

Q. Has that a rigid casing or sleeve?

A. Yes, it has. [270]

Q. What is the number on it?

(Testimony of George F. McDougall.)

A. The one numbered 4, you mean?

Q. Yes.

A. That is apparently 22, I think, on the bell end.

Q. Has it an internal annular groove?

A. No, there is no internal annular groove in that. The packing mounting is in the other piece.

Q. So naturally there is not any packing member maintained in an annular groove in the sleeve?

A. Not in the bell. It is in the other piece, but that is immaterial. It doesn't make any difference which side they are on. They work just the same if you put it on one piece or the other.

Q. You say they work just the same?

A. It wouldn't make any difference in this case whether you—you would have to shape the parts a little bit differently, but if you wanted to work a circular arcuate tube into another one this way and get an elbow motion, it doesn't make any difference which part you put the packing on as long as it is properly designed. It could be put on one as well as the other.

Q. Would it function in the devices of Exhibit 70 or 47 or 48 if we put this device of a packing member on the unthreaded pipe end?

A. You are asking me to redesign all this stuff, Mr. Graham, and you can say a lot of things that way, but to sit here and [271] conjecture what might be done with it is hardly consonant with sticking to the truth.

Q. That is what I am trying to get at. You say it would not make any difference.

(Testimony of George F. McDougall.)

A. I say to a designer it would not make any particular difference. It is a matter of choice whether you put your packing on one part or the other.

Q. Now referring to the Berry patent, Exhibit 36, is there a sleeve into which an unthreaded pipe end extends?

A. When you are not speaking directly towards me it is hard to hear you.

Q. Is there a sleeve into which an unthreaded pipe end extends?

A. There is a sleeve into which a reduced section of pipe extends. Now there is another play on words there. Unthreaded pipe is used in the Lanninger patent meaning a pipe that is not threaded to another pipe. It was not threaded for attachment to another pipe. Now this particular pipe is threaded, but only amounting to a couple of annular rings on it to form a groove on the surface of it for holding the flange packing, and in the sense that it does not screw onto another pipe it is an unthreaded pipe. But it is actually threaded because the two members P and Q, which are annular rings, are screwed onto it and they are so arranged that the flange O of the flange packing R may be gripped between them to hold it in place.

Q. You say the only purpose of that thread on there is to mount [272] the packing member?

A. Well, it is evidently to mount another piece there, but it is not——

Q. Please describe that other piece.

A. No, I didn't describe that other piece. There

(Testimony of George F. McDougall.)

is a piece apparently riveted on there, and it seems to be both screwed and riveted on, but I think those are just short lugs. I don't think they go all the way around. I haven't read the description of it.

Q. It is not a packing to furnish a joint for a series or string of pipes, is it?

A. Why, apparently, yes.

Q. It is a series of connected articulated joints?

A. That is what is shown, but quite obviously the articulations can be 12 or 16 feet apart if you wish. That is merely a matter of choice. There are no dimensions given on there, you know.

Q. Now is there any frictional enclosing of an unthreaded pipe end by the packing member?

A. No. As I explained on my direct examination this pipe packing works the opposite way. It expands outwardly against the bell in order to make the seal. Figure 2 is when the pipe is at rest with no pressure inside of it. That flange "L" there is to support the packing so that it does not collapse inwardly. It shows it collapsed onto the flange "L" in Figure 3, the left hand end of it there, and it is shown under pressure conditions [273] in Figure 4 in projection to that first figure there, and it seals against the inside of the bell. That is just the same old principle, but reversed.

Q. But Exhibits 47 and 48 do not adopt that, do they?

A. They are not like that, no. 47 and 48 are—I haven't got that straight in my head. 47 and 48,



(Testimony of George F. McDougall.)

I think, are those two examples of the accused device; is that right?

Q. Yes.

A. They don't use that type of packing at all.

Mr. Graham: I will just have a few more questions, if your Honor please.

Q. Referring to the Serrell patent, Exhibit No. 39—

The Court: That is the faucet?

Mr. Graham: Yes, if your Honor please. At this time I raise the point that it is very apparent it is not in the art of a joint.

The Court: I think I agree with you. You might as well skip the cross examination on that because it is too remote. It shows what it is. It is not an attempt to give a loose joint to pipe so as to achieve a certain result. It is merely reducing a faucet so you can put a hose on it, and it is rigid. It has also two rivets by which it is made fast, to use a nautical term, and a faucet I don't think has anything to do with this art. It is connecting the faucet.

Mr. Graham: Well then, I will just— [274]

The Court: It is a piece to couple a hose up tight onto a faucet so that we can turn on the faucet and it will run into a hose which is smaller than the faucet itself. It is a typical reducer, I would call it, in plumbing. It is plumbing equipment. I don't see any similarity between the two, and none was pointed out. The mere fact it is a patent doesn't mean anything. It doesn't teach anything, and noth-

(Testimony of George F. McDougall.)

ing is claimed in the claims and nothing is disclosed that could in any way be anticipatory or related to the art of which we are talking. He says the object of the invention is to connect rubber tubing or hose with faucets, "and the objects are to secure a simple and inexpensive construction, to provide a device the body of which can be applied to the faucet in a semi-permanent manner and by persons without mechanical skill, to permit ready and secure connection of the hose with and disconnection of the same from the body of the device, which remains at all times upon the faucet, to prevent all possibility of the device being forced off the faucet by the water pressure, and to guard against leakage. These ends are attained by the construction, the preferred embodiment of which will now be briefly described."

I have seen it done in dairies in California, where they will connect a long piece of hose to one of these attachments and flush their barns, the concrete floor of the barn, and it is done in many of them. I have seen it done in double washtubs, where you do it so as to run the water far away and [275] you have only a central faucet. If you have a single connection and you don't have one of those movable spouts, why, I have seen a hose connected in that way. You can get your water in one tub rather than in another of the tubs. I don't think it is a kindred art at all. Furthermore, the reference was given more as a matter of academic interest. The Examiner made reference to it so as to

(Testimony of George F. McDougall.)

have the lawyers arguing about it. He didn't say what he found in it. I have looked through the wrapper, the file wrapper, and looking at the references made pro forma right in the middle of the proceeding—in other words, what he was doing was merely suggesting a few more references so he would be sure to draw claims that would not possibly conflict with some of the others. So far as I am concerned you may as well disregard that one.

Mr. Graham: That is all I have with this witness, your Honor.

The Court: Any redirect?

Mr. Middleton: No redirect, your Honor.

(Witness excused.)

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Mr. Middleton: I may ask leave to call the witness again for one more question when we have proceeded further, but at this time there is no redirect.

The Court: All right. Have you any additional witnesses?

Mr. Middleton: Yes, your Honor; there will be two or three more. [276]

The Court: What is the nature of their testimony?

Mr. Middleton: To finish up the matter of the plaintiff's action in respect to those patent claims.

The Court: I think in view of the fact that there was a mere consultation and they never did anything on that, and the patent was rejected, the

entire action is immaterial. No estoppel could arise and certainly no laches. He has done nothing; merely consulted with the man, with the idea of procuring a patent, and the Patent Office rejected it and he accepted the rejection and never even followed it up. On the basis of that they never could go ahead and manufacture. I allowed the testimony to go in, but it is actually valueless so far as establishing either estoppel or laches.

Mr. Middleton: But the point that I have made, your Honor, does not go to the validity of the application or what happened to it. It goes to the fact that during that application this plaintiff came in and put a new construction on its claims.

The Court: I know of no authority which says that discussion of a patentee with somebody else, unless it amounts to misleading one into the belief that he could go ahead and manufacture a thing with immunity, amounts to an estoppel. The only estoppel there is in the law of patents is estoppel in the Patent Office, and that is where his claims were rejected and in order to secure the patent he had to limit it. Then he cannot be heard to say afterwards that he should have the broader interpretation. [277]

Now I have allowed the testimony to go as far as it has, and the testimony merely shows that these parties corresponded with the prospective inventor relating to an invention which was never patented. He was not their agent, authorized to communicate to others the right that they may resort to this latch and use it. He was seeking to patent it and



it was rejected on a foreign patent. I can't see how an estoppel can arise.

If you want to make a record I will let you offer testimony, but I can't see it has any bearing, because no laches could arise under those circumstances, and that state- [280] ment is too broad to be supported. I would like to see an authority that supports that statement to the extent that merely because the inventor says to the other fellow, "Now here is the way I construct it", in the absence of rulings on it, in the absence of developing without protest a device, in the absence of inducing him—what is that phrase they use in equity on that subject—lulling them into a sense of security in believing that they are free to act—only that can be considered in equity. That is what they call estoppel in pais in the old equity. Of course it is still a principle, because we have equity jurisdiction in these courts. But I cannot see the materiality of all the testimony that has gone in, because they don't show an estoppel. They don't show any action which would justify these defendants in assuming that they had a right to construct a device without any fear of infringing, if in fact it did infringe.

Mr. Middleton: The testimony would show, your Honor, that the defendants relied on the assurances conveyed to them.

The Court: By whom?

Mr. Middleton: By Mr. McDougall, in the light of his knowledge.

The Court: Mr. McDougall had no authority to convey assurance. All he was told was merely that

this particular latch might be patented and they collaborated with him in trying to have it done. We are not talking about a latch. This is only one of six or seven elements in the patent. He was not an [281] agent. He had no authority to go out and sell the rights of the patentee. A licensee has no right to give away the rights of the patentee. They don't have a general license. He is not the real owner of the patent. The license is limited to the exclusive manufacture for irrigation purposes. He is not an assignee of all rights of control or ownership of the patent. And while he may bring an action for infringement he is not the owner so as to bind the owner and authorize a third person who is in no business relationship with the owner to the construction of a patent which deviates from the claims allowed by the Patent Office. That is another point.

Another reason is because the alien who is represented here by the Alien Property Custodian had absolutely no right to have his rights affected by a mere licensee, whose license calls for the construction and sale of the patented device. It does not allow him to endanger—patent licensees have sometimes been sued for infringement when they went beyond the scope of their patent. So there is another reason why any such statement would not be a defense to infringement.

Mr. Middleton: Your Honor, in that case there will be only one short course of examination directed to show that this patent has remained a

paper patent and has not been put to practical application and use.

The Court: That is all right. I will allow you to show that. [282]

Mr. Middleton: Does the Court wish to continue now?

The Court: I cannot tonight, gentlemen. I have an engagement I have to keep. But we will have a session tomorrow.

Mr. Graham: May I ask, if your Honor please, to reserve a motion to strike out those exhibits which I objected to as irrelevant and immaterial relative to these letters?

The Court: I think you had better make it when he has rested.

Mr. Graham: I still reserve the right.

The Court: All right.

(Thereupon an adjournment was taken until tomorrow, Saturday, August 22, 1942, at 10:00 o'clock A. M.) [283]

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Saturday, August 22, 1942, at 10:00 o'clock A. M., Court reconvened, pursuant to adjournment and proceedings herein were resumed as follows:

Mr. Middleton: If the Court please, Mr. Graham and I have, I believe, reached an agreement on the facts relative to the use and commercial success of the devices made and claimed to have been made under the patent in suit, and I will endeavor to formulate our understanding in the form

of a stipulation of fact, with the suggestion that if Mr. Graham in any manner feels I do not follow the tenor of our understanding he interrupt me as I go.

It may be stipulated, your Honor, as I understand it, that the plaintiff California Corrugated Culvert Company did during the years 1936 and 1937 make and sell a small number of couplers in the form exemplified by Exhibit 70 and incorporated the flange or hat gasket form therein shown; and excepting for that small number made in the years 1936 and 1937 there have been neither made nor sold any other couplers in the form shown by Exhibit 70.

That up to the year 1940 the principal commercial product in couplers of the plaintiff California Corrugated Culvert Company has been a coupler having the same characteristics as Exhibit 2. That is that lever action coupler. Beginning in 1940 and continuing to the present time the plaintiff California [284] Corrugated Culvert Company has additionally to the couplers responding to the characteristics of Exhibit 2 made and sold couplers responding to the characteristics of Exhibit 17, and in that form used a gasket in the form there shown. And in the State of Oregon in the years 1940 and 1941 the plaintiff California Corrugated Culvert Company has sold 2,467 couplers in the shape and form and using the gasket form exemplified in Exhibit 17.

Mr. Graham: That is substantially correct, your Honor, with these modifications: That when coun-



sel speaks of the form of the Lanninger patent and the shape of the gasket as a hat-shaped gasket he means the exact form shown in the drawings.

Mr. Middleton: As exemplified by the two exhibits that I have referred to, Exhibit 17 and Exhibit 70; is that correct?

Mr. Graham: By exact form I mean a packing member having a perpendicularly extended flange extending into a groove closely fitting that flange; and the further modification that from 1936 to 1940, while Exhibit No. 2 was the principal or what we might call the leading device, it also sold coupling members similar to Exhibit 17; and since 1940, while Exhibit 17 has been their leading or principal device they have also sold couplers similar to Exhibit 2.

The Court: I think for the purpose of a prima facie case or any finding of the Court that is a sufficient showing of reduction to practice. In the Byron Jackson case, to which I referred yesterday, Byron Jackson against Wilson, 43 Federal [285] Supplement, that was a rather bulky tool and the showing was that they had produced some thirty devices manufactured and constructed, but they were very large and sold at a price of some one hundred eighty or one hundred ninety dollars, and I held that bearing in mind the bulk and the price of the devices that was a sufficient showing of reduction to practice. Ultimately the reduction to practice is a relative thing. It depends on the device, on the cost, on the size and the territory, and

so I think we have gained probably a lot of time by your stipulation.

All right; the Court will accept the stipulation and consider it when determining the question of reduction to practice and will be bound by the wording of the stipulation.

Mr. Middleton: Will it aid the Court in that connection if we attempt to give the Court an idea of the number that have been produced?

The Court: Well, you may do it in the argument, if you wish, but I don't want to take time at present.

Mr. Middleton: Well, in order to have a basis of argument, of course, we should have some facts either stipulated or testified to, if it will aid the Court.

The Court: I think so far as the Court is concerned your stipulation is broad enough to show reduction to practice, and that is all that is important. Any greater detail is not material, because I am not taking an accounting here. If there is an ac- [286] counting it is not going to be taken by me; it is going to be taken by a master.

Mr. Middleton: The only thing I have in mind the stipulation mentioned a small number——

The Court: Then it becomes a question of argument as to whether that is sufficient reduction to practice.

Mr. Middleton: As a comparative thing maybe we should establish what the amount of production has been as ten thousand, or something to give the

Court something to measure by. That is the only thing I was thinking about.

The Court: Can you stipulate to that?

Mr. Graham: That is only as to Exhibit 70. There were but relatively few of that particular device made. I think I would be willing to concede with regard to Exhibit 70 that in that exact form there were not over a half a dozen of those made.

The Court: That would not go out of the stage of models.

Mr. Graham: I would say as to what particular device there was not over a half a dozen made.

Mr. Middleton: Would you say further that the annual sales in commercial practice has run into the thousands?

Mr. Graham: Of which device?

Mr. Middleton: Of any of these couplers that we have had before us which have been made commercially.

Mr. Graham: That is of the plaintiff's or defendants'?

Mr. Middleton: Of the plaintiff's. [287]

Mr. Graham: I would say that Exhibit 2 and Exhibit 17 have run into the thousands.

Mr. Middleton: Annually?

Mr. Graham: I would not want to say every year. I don't know. I can find out for you in just a second. It might save a lot of time.

The Court: What does the device sell for commercially, gentlemen? Let's get that as a criterion. It all depends ultimately on the size of the equip-

ment. You could have a little device like in the Mantz case, when he had nothing but a fastener on a window, and the thing would not cost over four or five cents. You might manufacture a million and not get anywhere.

Mr. Middleton: The Court should understand that these devices are made all the way from an inch and a half and two inches up to possibly thirty-six or forty inches in diameter.

The Court: I understand the size of the pipe varies. I can understand that.

Mr. Graham: Maybe we can stipulate now, if your Honor please, that the number sold of both Exhibit 2 and Exhibit 17 ran into quite a number of thousands annually. They estimate about ten thousand of No. 2 annually and about nine thousand of No. 17 annually.

The Court: All right.

Mr. Middleton: And as I understand, as to Exhibit 70 there were only about half a dozen of those?

[288]

Mr. Graham: Yes; that is, in those particular years, 1936 and '37.

Mr. Middleton: Now to complete the record in the introduction of exhibits, your Honor, I will offer at this time Defendants' Pre-Trial Exhibit 25 and 25-A.

(Copy of Patent 222,195, T. J. McGowan, so offered, having been previously marked Defendants' Pre-Trial Exhibit 25, was marked received as Defendants' Exhibit 25; an enlargement of the drawings of Patent No. 222,195,



so offered, having been previously marked Defendants' Pre-Trial Exhibit 25-A, was marked received as Defendants' Exhibit 25-A.)

[Printer's Note: Defendants' Exhibit No. 25 is set out in full at page 391 of this printed record.]

Mr. Middleton: I also offer in evidence at this time Defendants' Pre-Trial Exhibits 29 and 29-A.

Mr. Graham: What are they being offered for, Mr. Middleton?

Mr. Middleton: 25 and 25-A, patent to McGowan, is offered in anticipation of the prior art. 29 and 29-A are offered for the same reasons.

The Court: They may be received.

(Copy of Patent No. 685,818, to R. F. Close, so offered, having been previously marked Defendants' Pre-Trial Exhibit 29, was marked received as Defendants' Exhibit 29; enlargement of drawing of Patent No. 685,818, so offered, having been [289] previously marked Defendants' Pre-Trial Exhibit 29-A, was marked received as Defendants' Exhibit 29-A.)

[Printer's Note: Defendants' Exhibit No. 29 is set out in full at page 401 of this printed record.]

Mr. Middleton: At this time I will also offer in evidence, your Honor, Defendants' Pre-Trial Exhibit 37, being a patent to Ward, to show the prior art, the state of the art.

(Copy of Patent No. 1,448,646, so offered, having been previously marked Defendants'

Pre-Trial Exhibit 37, was marked received as Defendants' Exhibit 37.)

[Printer's Note: Defendants' Exhibit No. 37 is set out in full at page 423 of this printed record.]

Mr. Middleton: I also offer at this time, your Honor, Defendants' Pre-Trial Exhibits 46-A to 46-F, inclusive. In this connection I might say for the Court's information that the originals of these documents in Exhibits 46 and the various papers there are stipulated by both parties and the dates appearing on the various documents are stipulated to be correct.

The Court: All right.

Mr. Grhaam: But the legendary matter or the descriptive matter in the booklets just offered is not conceded to have any authority or to be correct.

Mr. Middleton: The plaintiff does not so concede.

Mr. Graham: Yes, and therefore objects.

The Court: Well, if there is an objection pending I will overrule the objection.

(The booklets and documents referred to, relating to "Vim" leather packings, so offered, having been previously marked Defendants' Pre-Trial Exhibits 46-A to 46-F, respectively, were marked received as Defendants' Exhibits 46-A, 46-B, 46-C, 46-D, 46-E and 46-F, respectively.)

Mr. Middleton: The defendants offer at this time as an exhibit their Pre-Trial Exhibit 90.

(The letter referred to, dated November 30, 1940, William S. Graham to Alaska Junk Company, so offered, having been previously marked Defendants' Pre-Trial Exhibit 90, was marked received as Defendants' Exhibit 90.)

Mr. Middleton: The defendants also offer at this time as an exhibit Pre-Trial Exhibit 94, being a photostatic copy of pages from Knight's Mechanical Dictionary.

(Photostatic copy of two pages from Knight's Mechanical Dictionary, No. 1103 and 1104, so offered, having been previously marked Defendants' Pre-Trial Exhibit 94, were marked received as Defendants' Exhibit 94.)

Mr. Middleton: Defendants also offer as an exhibit Defendants' Pre-Trial Exhibit 95, being another photostatic copy of a page from Knight's Mechanical Dictionary.

(Photostatic copy of page 1259 of Knight's Mechanical Dictionary, so offered, having been previously [291] marked Defendants' Pre-Trial Exhibit 95, was marked received as Defendants' Exhibit 95.)

The Court: Exhibit 90 is merely the notice?

Mr. Middleton: That is right, your Honor.

The Court: The letter or notice of infringement and request to desist.

Mr. Middleton: Defendants also offer at this time as an exhibit, Pre-Trial Exhibit 50, which is the center coupling there on the Court's desk. This exhibit is offered in order to exemplify another

form of locking means described in Claim 3 of the Lanninger patent.

Mr. Graham: That is the defendants' exhibit, if your Honor please. I don't object to the exhibit except that it is manifestly not made according to the structure disclosed in the patent nor with the means of operation or the purpose expressed in the patent, because it has no flexibility at all.

Mr. Middleton: In that connection, if the flexibility is the point of the objection, why, I would respond that shows small flexibility but it is evident that by simply enlarging the hole a little bit you would get greater flexibility.

The Court: Well, unless it exemplifies something I don't know what place it has in the record. It makes a lot more hardware for the Clerk to have to handle.

Mr. Middleton: I just wanted to inform the Court as to another form of that locking means, was all, but I am not very [292] particular about it. It is not quite the same as the others.

The Court: This is one piece instead of two pieces and has a cotter pin just like the other, except it has one extension instead of two.

Mr. Middleton: This one has a collar around the pipe instead of having it welded on.

The Court: That is correct.

Mr. Middleton: I am not particular about it if the Court would rather——

The Court: It might show one way of reducing to practice. I think, gentlemen, this should be borne in mind in regard to any exhibit. I have



studied this patent much more carefully in the last day or so than I had before, and the locking means is not only illustrated in the drawings but described very specifically in Column 2, lines 65 to 70, as consisting of "an eye 'c<sub>1</sub>' of pipe 'c' projects with sufficient play into a lug 'a<sub>1</sub>' of the sleeve 'a' and is connected with the same by a loosely inserted cotter pin 'd'. The easy movement of the hinge 'c<sub>1</sub>', 'a<sub>1</sub>' and the ample play of the cotter pin in the borings of the hinge further increase the flexibility of the joint of the pipes and the facility of this joint to adapt itself to the irregularities of the ground and the available space."

Now another thing is this: Not only the drawings but the specifications would seem to stipulate or postulate, rather, a peculiar hinge-like affair, and that is further illustrated [293] by the fact that in all claims, in claims 4, 5 and 6—they of course are not involved here, but they nevertheless may be resorted to for a better understanding of the claim in suit—that connection is also claimed as an element of invention. Now that has a very important bearing on the case, and any reduction to practice which does not take these facts into consideration is not helpful in determining any of the issues in this case. So that unless counsel could agree that this is constructed according to the teachings or is the equivalent, I don't see that this exhibit helps us any at all.

Mr. Middleton: I am perfectly willing it be ruled out, your Honor.

The Court: Well, I will sustain the objection,

then, to Exhibit 50 on the ground there is no showing it is constructed according to the teachings of the patent. In fact, I would say it is not. There is sufficient deviation there to do away with the very object sought to be accomplished by the loose connection, namely, an added flexibility which the inventor evidently had in mind, because he put it everywhere—he puts it in the drawings, he puts it in the specifications, and then claims it in three claims in suit. Of course, he doesn't claim it here. Nevertheless, in determining what the invention is you have got to take it as a whole, and you can't split it up into elements. You can't claim part of the whole. There is such a thing as claiming a modification, but here the claim is of the whole of [294] the invention. All right.

Mr. Middleton: In furtherance of the line of questioning that was followed yesterday, your Honor, I understand in advance that the Court has ruled that out, but merely to complete the record in that particular I will offer as exhibits Pre-Trial Exhibits 85, 86, 84, 92 and 93, with the sub-numbers, with the understanding that the Court, following yesterday's ruling, will probably rule against their admission. They all concern this matter of the construction placed on the patent—

The Court: The objection will be sustained. As I said yesterday I am satisfied there is no estoppel arising from any negotiations that may have been going on leading or intending to lead to the patentability of a lock that might take the place of the latching means described in the patent.

Mr. Middleton: I merely wanted to complete the record in that respect.

The Court: That is all right.

Mr. Middleton: I will call Mr. Pierce.

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RALPH H. PIERCE

was thereupon produced as a witness in behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Middleton:

Q. You stated your name to the reporter, did you, Mr. Pierce? [295]      A. Yes.

Q. Where do you live?      A. Eugene, Oregon.

Q. What is your business, Mr. Pierce?

A. Manufacturing pipe couplers.

Q. How long have you been engaged in that business?      A. Ten years.

Mr. Middleton: Will the bailiff please hand to the witness Exhibits 47 and 48.

Q. Examining Exhibits 47 and 48, Mr. Pierce, I will ask you whether or not you manufacture couplings similar to those exhibits excepting for the locking means that are shown on each thereof.

A. I do.

Q. How long have you been engaged in the manufacture of those couplings?

A. Ten years.

Q. In manufacturing that coupling, Mr. Pierce, do you manufacture or buy from others the gas-

(Testimony of Ralph H. Pierce.)

kets that are used as a part of the coupler structure?      A. I have the gaskets made.

Q. Do you insert them in the couplers as you sell them?      A. No.

Q. Beg pardon?

A. Not in this half coupler. In the case of the full coupler we [296] do put the gaskets in.

Q. Can you speak a little louder?

A. In the case of the full coupler we put the gaskets in, but what we call the half coupler, this particular model, we don't insert the gaskets.

Q. What do you do? Send the gaskets along with them when you sell them?      A. Yes.

Q. Now have you had occasion to test those couplers and examine them in use?      A. Yes.

Q. Will you state whether or not it is necessary, as you found it from your tests and your examinations of couplers in use, that the gasket or packing be a tight fit within the hub?

A. No, it is not necessary to be a tight fit. I notice this particular one here seems to be quite loose.

The Court: Speak a little louder.

A. The gasket can be quite loose in the groove. This particular gasket is loose at that place. The gasket is not tight in the groove. It still seals. The pressure of the water presses the lips up against the casing between the pipe and the coupler so that it seals, not necessarily being a tight fit.

Q. (By Mr. Middleton) In forming the metal



(Testimony of Ralph H. Pierce.)

do you sometimes form those that do not fit tightly against the rubber gasket?

A. There is quite a little difference in steel. Some is harder [297] than others and they roll differently. Sometimes a diameter here will be as much as an eighth of an inch more than it is in other cases.

Q. And if there is play between the gasket and the steel shell does that play or space have any effect in the usefulness of the gasket? A. No.

Q. When reduced to its function in the field?

A. No, it does not.

Q. Does the joint remain tight even if the gasket is loose in a state of repose?

A. Yes, with the possible exception except when there is very, very low pressure it might seep through a little bit, but as soon as any pressure is applied it seals.

Mr. Middleton: That is all.

### Cross Examination

By Mr. Graham:

Q. Mr. Pierce, you say that it is not necessary that the packing member fit tight in the groove?

A. No, it is not necessary.

Q. But you have the gaskets made, do you not?

A. Yes.

Q. Do you have them made of lesser diameter than the groove?

A. No, the gaskets are uniform in diameter, but there is a variation in coupler size, so sometimes it is tight and sometimes [298] it is loose.

(Testimony of Ralph H. Pierce.)

Q. Do you intentionally make some of them greater diameter than others?

A. No, I don't do that intentionally. It is just a matter of during the process of manufacture some of them turn out that way.

Q. A little louder.

A. I say we do not intentionally make them larger.

Q. You don't intentionally make them smaller?

A. No.

Q. If a man ordered one hundred of your couplers of 4-inch diameter do you make some of them more than 4-inch and some of them less than 4-inch?

A. We have certain machines to manufacture these couplers and, as I said before, the hardness of the steel controls the diameters to some extent. We run these couplers through the machine and some of them—if they vary a fraction of an inch they are still serviceable and we ship them out.

Q. So this is really imperfection of manufacture? A. That is right.

Q. If the coupler happens to be one of those which is of lesser diameter there is a tight fit, very tight fit? A. That is right.

Q. And if it happens to be an imperfection which makes it of a greater diameter it happens to be a loose fit? [299] A. That is right.

Q. But the intention is to make them all a diameter wherein the outer rim of the gasket fits closely in the groove?

(Testimony of Ralph H. Pierce.)

A. Yes, it is supposed to fit closely.

Q. Beg pardon?

A. It should fit fairly closely in order to hold it in place.

Q. When the water is put into the line under pressure is there still space between the inner wall of the groove and the gasket member?

A. Not after the pressure is applied.

Q. That comes in tight? A. Yes.

Q. Held tight? A. Yes.

Q. What kind of a machine do you make that coupler with, the sleeve member?

A. Well, there is two operations in making that. One is a punch press and the other is a roll. We first offset the end of the coupler to get a larger diameter. Then we put it in a roll that rolls the casing and puts a flange on the end.

Q. So that when it comes to putting that internal annular recess in it you do that with rollers?

A. Yes.

Q. That is, one roller is concave on the outside of it and there is one roller that is convex on the inside of it? [300] A. That is right.

Q. And that rolls a groove in there, what we have called a groove? A. Yes.

Q. Do the rollers go around or does the pipe go around? A. Both.

Q. One goes around the other, orbital movement?

A. Both rollers are driven similar to rollers in a wringer, and this coupler goes around in be-

(Testimony of Ralph H. Pierce.)

tween, fits over the inside roller, and they are rolled together under pressure, fit together under pressure, so it forms the metal in that shape.

Q. Now you have seen the Lanninger patent, haven't you?      A. Yes.

Q. The figures in the Lanninger patent of the sleeve appear to be heavy metal, don't they?

A. I believe they do.

Q. And with that type of metal, that heavy metal, you would make it out of casting?

A. If I was going to make it I probably would.

Q. And then maybe finish them up inside with a reamer, or something like that. Now could you make that type of annular groove as shown in the Lanninger patent with rollers?

A. Not on that heavy material. It is very possible it could be on thin material. I never tried it; I have never seen it tried.

Q. You never tried that?      A. No. [301]

Q. But you make your coupler there with a wide groove because it is in thin metal and you can roll it better?

A. The reason I make this wide groove is to accommodate the gasket, which has considerable body on the outside, which prevents the pipe from pushing it out of the groove when you insert the pipe. If the gasket had a thin lip on the outside when you go to push the pipe in it might catch and push the gasket ahead of the pipe and get it out of place. When there is considerable body to



(Testimony of Ralph H. Pierce.)

the gasket and it is shaped to fit the groove there is no possibility of pushing it out of the seat when you put the pipe in.

Q. The forward wall of that groove prevents it from being pushed forward?

Mr. Middleton: If the Court please, I think his cross examination is improper. The direct was confined to the fit of the gasket in the sleeve.

Mr. Graham: That is what I am attempting——

The Court: Well, he has a right to inquire to determine the foundation for the opinion expressed by the witness that in actual practice the looseness of the joint does not make much difference. Go ahead.

Mr. Graham: May I have the question read, your Honor?

The Court: Yes, read the question.

(Last question read.)

The Witness: What do you call the forward wall? [302]

Q. (By Mr. Graham) Well, the wall furthest removed from the insert or outwardly extended end. A. This side?

Q. I would say that was the forward wall, being the wall of the groove opposite the hook member.

The Witness: What is question again?

(The question was re-read as requested.)

A. Yes.

Q. (By Mr. Graham) And the rearward wall

(Testimony of Ralph H. Pierce.)

prevents it from being pushed backward out of the sleeve when there is pressure of water in the pipe?

A. Yes.

Q. Then there is a tight fit when there is pressure between the packing member and the internal wall of the groove? A. That is right.

Q. Now there is a flexible relation between the coupler that is attached to one pipe and the inserted pipe; isn't that correct?

A. That is right.

Q. And that is shown in your catalogue that has been put here in evidence? A. It does.

Q. It has a cross section cut in it?

A. It has flexibility.

Q. Then when your pipe which has the unthreaded end is inserted in that the packing member has a free cylindrical portion that [303] extends around and encloses the unthreaded pipe end?

A. That is right.

Q. And that seals against the unthreaded pipe end? A. Yes.

Q. Now in rolling that annular groove in the metal that is rolled on a concentric arc, isn't it?

A. Yes.

Q. Then is the outer rim of your gasket formed on a concentric arc? A. No, it has two arcs.

Q. In which portion of the gasket is the arc greater?

A. The portion fitting in what you call the forward side of the groove.

(Testimony of Ralph H. Pierce.)

Q. That is the free edge of the outer rim?

A. That is right.

Q. Up to the peak of that rim is the larger arc?

A. Yes.

Q. And the other naturally is the smaller arc. When you put that gasket into that groove what is the purpose of making one of those of a larger arc?

A. Well, the original purpose was to cause that portion of the gasket to contact the metal, closing against leakage under low pressure.

Q. I didn't get that.

A. The purpose of the larger arc is to cause the rubber to con- [304] tact the metal in the groove, sealing the joint under low pressure.

Q. When that larger arc is pressed into the groove then it pushes the back wall of that rim against the contacting wall of the groove, doesn't it?

A. I wouldn't say it pushes it in there. That naturally locates itself. The forward lip of the gasket is under some compression when it fits into the groove.

Q. It fits into the groove with what?

A. I say, the forward lip of the gasket when it is pushed into position is somewhat compressed to conform to the arc of the metal.

Q. Compressed by what?

A. By its own expansion of rubber.

Q. I see. Then if it is somewhat compressed

(Testimony of Ralph H. Pierce.)

doesn't it follow that it pushes the other wall of the rim against the wall of the annular groove?

A. Well, the gasket would naturally come into contact with that wall anyway, due to its shape.

Q. It would naturally do that anyhow?

A. Yes.

Q. Yes. Well then, when there is compression of the larger arc on the free end of the rim doesn't that compression push the gasket against the rear wall?

A. It would have a tendency to hold it there, yes.

Q. Does it make a tighter fit? [305]

A. Yes, it would be a tighter fit.

Q. And that would be increased when there was pressure of water in the pipe line?

A. That is right.

Mr. Graham: That is all.

Mr. Middleton: No further questions, your Honor.

(Witness excused.)

Mr. Middleton: I will call Mr. McDougall, your Honor, for a question or two on aggregation and then I will be through.



## GEORGE F. McDOUGALL

was thereupon recalled as a witness in behalf of the defendants and was further examined and testified as follows:

## Direct Examination

By Mr. Middleton:

Q. Mr. McDougall, I will inquire whether or not you have examined the Lanninger patent in suit with respect to the operation in use of the various elements described in Claim 3.

A. Yes, I have.

Q. Can you state to the Court whether or not the various elements described in Claim 3, as we have been over them here many times, operate in use each pursuing and accomplishing its own function and result, or whether the combination as a whole operates and functions to produce a new result? [306]

Mr. Graham: I think that calls for a conclusion——

The Court: That is not proper expert testimony. That is the function of the Judge. The Court must determine that. That is not a subject of expert testimony. You might as well ask him if he thinks there is infringement. You don't prove whether you have a combination or an aggregation by expert testimony. If that were true you might as well abolish the judges.

Mr. Middleton: Well, I want to record his opinion for what it is worth.

The Court: Well, I don't want an expert to tell

(Testimony of George F. McDougall.)

me how to decide a lawsuit. He has got to enlighten me as to what is before me, but not decide it. That is not his province. I can decide it and disregard all experts, take the testimony and take the descriptions given me in the file and the records and the patents and others of the instruments and base my own conclusions as to any patent except one, probably, involving higher mathematics or the like. That is what the courts have insisted at all times. That is why there has been a necessity to call a halt to the wild speculations of experts in patent cases. That is the province of the Court to determine, in the light of the testimony, whether there is a true combination or not.

Mr. Middleton: In that case the defendants rest.

(Witness excused.) [307]

(Short recess.)

Mr. Graham: I would like to call Mr. Hanson, if your Honor please.

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### LAUNCELOT W. HANSON

was thereupon produced as a witness in behalf of the plaintiffs, in rebuttal, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Graham:

Q. You have given the reporter your name?

A. Yes.

(Testimony of Launcelot W. Hanson.)

Q. What is your address?

A. 678 San Fernando Avenue, Berkeley.

Q. Your occupation?

A. Production engineer.

Q. With what company?

A. California Corrugated Culvert Company.

Q. The plaintiff in this action? A. Yes.

Q. How long have you been with them?

A. About sixteen years.

Q. And what has been your educational background in connection with engineering?

A. Graduate of the Massachusetts Institute of Technology in Boston. [308]

Q. What has been your practical experience?

A. Practiced engineering ever since graduation in 1923.

Q. What has been your experience in connection with pipes and pipe joints?

A. Being manufacturers of pipe we have always been interested in pipe joints for connecting pipes.

Q. When you say "we" you mean the California Corrugated Culvert Company?

A. That is correct.

Q. The plaintiff here. Have you read the Laninger patent here in suit? A. I have.

Q. And made somewhat of a study of it?

A. Yes, sir.

Q. Do you know what the practices were in irrigation relative to pipes and joints over any lengthy period of years?

(Testimony of Launcelot W. Hanson.)

A. Well, we became particularly interested in irrigation about 1932.

Q. What was the type of irrigation pipe and joint being used at that time?

A. The general practice as shown by the government bulletins was to connect pipes together permanently and leave them in the ground or on the ground so that they would always be in place and not move them from place to place. Then sprinklers were installed in the pipes of one type or another and left in [309] place, so that when they wanted to sprinkle or irrigate they would just turn on the water and the pipes would automatically be in place.

Q. How far apart, on an average, were these lines of pipe put in order to irrigate?

A. That would depend upon the pressure and the type of nozzle used, but probably around fifty or forty feet.

Q. Would they have a line of pipe every fifty or forty feet?

A. That is correct.

Q. They would leave those permanently installed?

A. That is correct.

Q. You have seen them in that type of irrigation installed?

A. Yes.

Q. What development or change did the Lanninger patent structure accomplish with relation to pipes and pipe joints?

A. It made a portable pipe which could be moved from place to place and made necessary only one line of pipe rather than numerous lines of pipe to cover an entire field. You could lay the line in one



(Testimony of Launcelot W. Hanson.)

position and leave it there for a certain length of time until enough water was sprinkled on the ground and then the pipe could be disconnected and moved a lateral distance, probably fifty feet, and then allowed to operate again, which meant that you only needed one line whereas in the old system you needed numerous lines.

Q. Would what you refer to as the old system of connected and [310] permanently installed pipes adapt itself to the irrigation of irregular ground?

A. They would use special fittings for that purpose.

Q. What type of fittings did they use?

A. Well, usually they used a threaded pipe and threaded elbows.

Q. Would that be a permanent structure?

A. That would be a permanent structure.

Q. And would they have to use the same thing to go around a bend?      A. That is correct.

Q. Now is there anything in the Lanninger patent that permits you to install pipes on irregular ground without permanent fixture?

Mr. Middleton: If the Court please, I believe that the patent itself answers that question.

The Court: I think that is rather a leading question. Will you read the question?

(Last question read.)

The Court: Well, the objection will be overruled. I think it is all right. You may answer.

A. The flexibility in the joint of the Lanninger

(Testimony of Launcelot W. Hanson.)

patent permits you to lay the pipe on irregular ground.

Q. (By Mr. Graham) Does going over irregular ground or around bends involve any more pressure in the pipe than a straight line?

A. Practically none. It is not noticeable. [311]

Q. What pressures do they use normally in irrigation?

A. Normal sprinkler irrigation goes from 30, I would say, to about 80 pounds. That would all depend upon the conditions, the length of the line, the size of the nozzles, and the rapidity with which you wished to apply the water.

Q. What would the effect of pressure within irrigation pipe and joints of the Lanninger type cause to happen?

A. I didn't understand.

Q. I say what would pressure in the pipes of the Lanninger type cause to happen?

A. It would cause making the joint more tight. The higher the pressure the more the tightness.

Q. Now the Lanninger patent speaks of a means of securing the sleeve on an unthreaded pipe end; is that correct?

A. Correct.

Q. Would that element have anything to do with the pressure in the pipe?

A. That element would be required to keep the pipe from blowing apart.

Q. They would otherwise blow apart under normal pressures?

A. Correct.

Q. How long is the average pipe attached to one of these couplers?

(Testimony of Launcelot W. Hanson.)

A. The pipe is usually 20 feet, as that is a practical length for a farmer to carry.

Q. About what weight are they? [312]

A. Four-inch pipe in the weight in which we make it weighs, I believe, 54 pounds.

Q. What is the lateral swing of the end of the pipe which is furthest removed from the coupler when you use the Lanninger patent device?

Mr. Middleton: Just a moment. If the Court please, I think that should be identified to one of the exhibits here. I believe that Mr. Graham is referring to Exhibit 17, but I would like it identified.

The Court: Well, if the witness is referring to one of the exhibits I think it is really better to have the reference. Go ahead.

Q. (By Mr. Graham) Did you ever hook pipe of some length onto a Lanninger coupler?

A. Yes.

Q. That you made in the early days, as was stipulated? A. Yes.

Q. About how much swing laterally is there to the furthest removed end of the pipe?

A. Twenty-foot length?

Q. In a 20-foot length. A. About 3 feet.

Q. How much swing is there in the end of the pipe in your Exhibit 17? A. About 3 feet. [313]

Q. Now referring to Exhibit 17, that is your commercial structure which you claim is made under the Lanninger patent? A. That is right.

Q. Now is it a pipe joint which is used in connection with pipes? A. It is.

(Testimony of Launcelot W. Hanson.)

Q. Is one end of the pipe unthreaded?

A. Yes.

Q. What happens to the end of the pipe when you insert it into the sleeve member?

A. They just telescope together.

Q. Is it held in there by anything?

A. Not until the latch is placed in position.

Q. By being held in there I mean is it held in the sleeve?

A. Is the plain end or unthreaded end——

Q. Yes.

A. ——held in the sleeve?

Q. Yes.

A. It is held in by means of the hinged connection.

Q. That Exhibit 17 has a rigid sleeve?

A. It has.

Q. Has it an internal annular groove?

A. Yes.

Q. Has it an elastic packing member in the groove? A. Yes.

Q. And does the elastic packing member have a flange? [314] A. Yes.

Q. Does that flange extend into the internal annular groove? A. Yes.

Q. What holds it in there?

A. Frictionally held.

Q. No bolts? A. No bolts.

Q. And has Exhibit 17 means for hingedly securing the sleeve on the pipe having the unthreaded end? A. Yes.



(Testimony of Launcelot W. Hanson.)

Q. You spoke of that as what member?

A. The hinged member?

Q. The means for hingedly securing; the latch on the top?

A. Means for hingedly securing the sleeve on the unthreaded pipe end.

Q. Yes. Which portion is that?

A. That is this combination of the latch and band and the lug in connection with the flexibility of the rubber which makes that possible.

Q. The cross section of your sleeve in Exhibit 17 is not identical in form with the cross section of the figures shown in the Lanninger patent, is it?

A. No, it is not identical.

Q. What prompted you to make the change in the form? A. Of the sleeve? [315]

Q. Of the sleeve?

Mr. Middleton: If the Court please, I fail to see the materiality of that question. The fact is that they make it this way.

Mr. Graham: Are you conceding, Mr. Middleton, that this commercial device here is within the disclosure of the Lanninger patent?

Mr. Middleton: Certainly not.

Mr. Graham: Then I have a right to show that it is.

Mr. Middleton: The question is not could it be that way. The question is is it that way.

The Court: I don't think the reasons are material. I will sustain the objection to the particular question. He can point out whether there is in his

(Testimony of Launcelot W. Hanson.)

opinion a device within the teaching of the patent, but he can't give his reasons. The reasons are immaterial.

Q. (By Mr. Graham) Did you make some mechanical change in the form of the sleeve as shown in the Lanninger patent as compared with Exhibit 17? A. Yes.

Q. What are those changes?

A. Instead of coming directly back on itself and making a narrow groove we made a longer groove with a slope on the back.

Q. Why did you make that slope or incline?

Mr. Middleton: That same objection, your Honor.

The Court: Objection sustained. [316]

Q. (By Mr. Graham) What purpose is served by making that slope or incline to the outer wall of the groove?

A. There are two reasons why that is done.

Mr. Middleton: If the Court please, let the answer be confined to the purpose and not to the reasons.

The Court: Yes, the function to be performed. Confine yourself to the function and what you sought to achieve; not the reason—what you sought to achieve by the change.

A. We sought to achieve a more practical application.

The Court: I see.

Q. (By Mr. Graham) Why is it more practical?

(Testimony of Launcelot W. Hanson.)

Mr. Middleton: The same objection, your Honor.

The Court: Well, that one I will allow. Objection overruled. Go ahead.

A. Because this type of groove is more easily fabricated from a roll section and it also allows the galvanizing to drain out when the pipes are galvanized. In many cases they are galvanized.

Mr. Middleton: I move to strike the answer as not responsive to the question of function there.

The Court: Overruled. We will let it stand.

Q. (By Mr. Graham) Did that change in structure make any difference in mode of operation as compared with the device of the Lanninger patent?

A. They both operate in the same way. [317]

Q. What do you mean? Will you please explain that. What do you mean by operate in the same way?

A. They both enclose a rubber gasket and make a tight joint.

Q. Do they operate the same when pressure is in the pipe? A. Yes.

Q. Is there any functional relationship between that slope or incline in the sleeve and the packing member which is in that Exhibit 17?

A. It is to retain the rubber packing in place.

Q. I am talking about the inclined surface. What is the function of the inclined surface from your annular groove?

A. Well, the inclined surface holds the rubber gasket in place.

Q. Holds it in place when?

(Testimony of Launcelot W. Hanson.)

A. At all times.

Q. Does it have any function in connection with the insertion of the pipe?

A. It holds the rubber gasket when the pipe is being inserted.

Q. What do you mean by holds it?

A. It is a method of keeping the rubber gasket from moving out of place.

Q. In which direction?

A. Well, the back slope here keeps it from moving backwards onto the pipe, and the front slope keeps it from moving forward.

The Court: The front slope is really what is designated as the groove; is that what you call that, a groove? [318]

A. That whole section here would be the groove.

Q. (By Mr. Graham) And one end of that groove has an inclined wall and one a more or less perpendicular wall?

A. Yes.

Q. Does the elastic packing member that you have in that device in Exhibit 17 function to seal the joint when pressure is in the pipe?

A. Yes.

Q. How does it function?

A. The pressure of water against the gasket forces it against the side of the annular groove.

Q. What is the direction of pressure with regard to water in the pipe?

A. Pressure is always normal to the surface.

Q. What do you mean by normal?

A. At right angles.



(Testimony of Launcelot W. Hanson.)

Q. And that gasket has a rear portion to its outer rim that abuts the wall of the annular groove?

A. What was that question?

Q. I say, the packing member has a rear wall that abuts the annular groove?

A. That is correct.

Q. And is that what you speak of when you say that pressure in the pipe pushes that packing up against the rear wall? A. That is right. [319]

Q. And that is because the pressure in the pipe is substantially axial to the length of the pipe and therefore presses backward?

Mr. Middleton: Just a moment. If the Court please, the witness just testified it was at right angles to the length of the pipe; not axial.

The Court: He is an expert. Go ahead; he may explain.

A. Pressure is always normal.

Q. (By Mr. Graham) Pressure is normal to a resisting surface? A. That is correct.

Q. But the direction that the pressure comes from is a back pressure in the pipe, isn't it?

A. It is pressure within the pipe.

Q. Yes. Now does that same thing happen in the Lanninger gasket? A. Yes.

Q. Explain how that occurs in the Lanninger gasket.

A. In the Lanninger gasket it has a vertical rim around the outside of the gasket, and that vertical rim contacts a metallic surface on the open end of

(Testimony of Launcelot W. Hanson.)

the coupling and any pressure from inside the pipe forces that rubber gasket against that rim.

Q. Forces what portion of the rubber gasket?

A. The rim portion.

Q. Do you use the word "rim" as synonymous with the word "flange" that the patent uses?

A. Yes.

Q. Now how does that effect of pressure operate in the packing [320] member in Exhibits 47 and 48?

A. I take it this is 47. It is a little indistinct here.

Q. Now how is the sealing of the gasket against the sleeve brought about in Exhibits 47 and 48?

A. Well, the pressure acts against the gasket and forces the gasket against this flat rim on the open end of the coupling, and also forces the gasket within this groove outwardly.

Q. Is that what you mean by pressure being normal to the wall of resistance?

A. That is correct. It is normal around each point here—it is at right angles at any point on a circle or flat, theoretically a flat, and it is normal to that.

Q. So that it presses against both the forward wall of the groove and presses against what you might call the top or outer wall of the groove and presses against the back wall of the groove?

A. That is correct, yes.

Q. And in your opinion is that the same mode of operation as is shown in the Lanninger patent?

A. It is the same mode of operation, but this one has a longer line of contact than it does on the Lanninger patent.

(Testimony of Launcelot W. Hanson.)

Q. Is that because the groove is larger?

A. That is right.

Q. If you made the groove in the Lanninger patent of that particular area would it operate in the same way, with the same effectiveness? [321]

A. Your pressure is always the same as the area in this particular case varies, so if you have more area and the same pressure you have the same load.

Q. Does it make any difference whether that is on a curved surface or a straight surface?

A. No, it is always normal to the surface.

Q. It is a question, then, of area?

A. It is a question of area.

Q. And if the areas in Exhibit 17, 48 and 47 were the same then there would be the same degree of sealing?

A. That is right.

Mr. Graham: That is all.

### Cross Examination

By Mr. Middleton:

Q. Are you familiar, Mr. Hanson, with the designating or defining of trade names in the industry which makes and sells the kinds of packings we have been here discussing as those trade names apply to some of the packings that have been before the Court?

A. I haven't inspected these particular catalogues, but I have seen many catalogues of that nature.

Q. Do you know the trade names that are applied?

(Testimony of Launcelot W. Hanson.)

A. To the particular things that are shown in the catalogues only.

Q. Looking at the gasket in Exhibit 17, Mr. Hanson, I will ask you whether or not that responds to the trade name of a U-packing [322] or the trade name of flange packing?

A. Well, by trade name, that is just what one particular manufacturer calls that.

Q. No, I am speaking of the industry generally. I have asked you whether or not the industry generally has trade names, and I think you answered it does; is that correct?

A. It has trade names for the particular things that that particular manufacturer makes.

Q. Well, but are those names common in the industry among all manufacturers or substantially all of them?

A. I don't know.

Q. You don't know. Do you know whether among the manufacturers and sellers of gaskets such as we have had before this Court that gasket from Exhibit 17 would be designated as a U gasket or packing?

A. No, because there is nothing shown like this.

Q. I didn't catch the answer.

A. There is nothing shown like this in any of the catalogues.

Q. You would not then designate that as a U packing or gasket; is that correct?

A. It might be one type of U gasket.

Q. You say that it might fairly be called one type of U gasket?

A. It might be.



(Testimony of Launcelot W. Hanson.)

Q. Do you say that it might fairly be called a flange gasket within that meaning as used in the trade? [323]

A. Well, as I say, there is nothing in the trade like this gasket.

Q. Well, would you say then that it may not be called a flange gasket within the meaning of that term as used in the trade?

A. It might be called a flange gasket because it has a flange on it.

Q. Within the meaning of that term as used in the trade?

A. Well, as I stated before, I don't know exactly what all the manufacturers in the trade call their gaskets.

Q. So that you don't know what a flange gasket is in the trade?

A. I know what some might call it. I don't say that all the trade calls it a flange gasket because I don't know the condition of the whole trade. I just know one particular catalogue.

Q. I see. But you do say that the operation of the gasket from Exhibit 17 and that from 47 and 48 is the same?

A. I didn't say the gaskets were the same. I said they operated in the same way.

Q. That was my question. And if I correctly understand you, that operation, taking my fingers as the two sides of the gasket, is the imposition of pressure between them which spreads them; is that right?

(Testimony of Launcelot W. Hanson.)

A. If there is any place for them to spread.

Q. Yes. At least they spread until they come in contact with the metal tube?

A. If they are already in contact they cannot spread. [324]

Q. Then they merely compress; is that right?

A. That is right.

Q. But the gasket from both Exhibits 17 and 47 and 48 operate in the same way in that manner under pressure?

A. They don't move, no. They contact——

Q. They stiffen up against the interior walls?

A. That is right.

Q. Now over my objection, Mr. Hanson, you gave some reasons for the formation of the groove in that Exhibit 17 and the way in which it is actually formed as you hold it in your hand there. I will ask you whether or not one of those reasons was that in rolling such a coupler sleeve it proved impracticable to form a flat backed surface for such a flange as this I hold in my hand?

A. On two sides.

Q. On two sides. It proved impracticable to do that, didn't it?

A. I didn't say impracticable. I said it is more difficult.

Q. It was more difficult to do that. And so for the sake of convenience in manufacturing an article it did not seem desirable to make that when you had to roll it?

A. That is right.

Q. I take it that the rolling process is very

(Testimony of Launcelot W. Hanson.)

much less expensive than any other process you can apply to make these things, is it not?

A. Well, we don't actually make them by rolling. We have other [325] methods. But it is a rolled steel product which it is made from.

Q. And it is more inexpensive to make them from that product than from any other applicable product, is it not?

A. More inexpensive to make them from a rolled steel product?

Q. Yes.           A. I think so.

Q. In other words, to form a coupling similar to Exhibit 70 here would cost very much more money; isn't that right? Exhibit 70 is the tall one.

A. Yes.

Q. And when you say more difficult to form you mean through processes you use, out of rolled steel, a roller to receive the back end of this flanged gasket, and a corresponding surface here at the top of it, and some form of lip here to retain it, and when you say it is more difficult does that refer to more difficult to form it so as to make it tight?

A. No.

Q. No; just to form it at all?

A. That is right.

Q. Is it true that if such a groove to retain the exterior rim of the flange of this hat packing is not truly formed on the back side the structure will leak?

A. That is a relative term, truly formed. That

(Testimony of Launcelot W. Hanson.)

would depend upon the flexibility in the rubber capable of contacting irregularities. [326]

Q. But if there are any substantial irregularities or imperfections in the metal facing at the back side of this cup packing or flange packing, then the instrumentality is apt to leak in use, is it not? A. Under very low pressures.

Q. And if the imperfections be considerable then under high pressures?

A. No, it would be zero under high pressures.

Mr. Middleton: That is all.

Mr. Graham: That is all.

(Witness excused.)

Mr. Graham: That is all of our witnesses, if your Honor please. The plaintiff rests.

The Court: All right. Anything further?

Mr. Middleton: No, your Honor.

The Court thereupon fixed time for oral argument, and stated that briefs would not be received, but that points of law could be argued and supported by citation of authority.

Hearing of testimony was concluded on August 22, 1942, followed by oral argument on August 24 and 25, whereupon the cause was submitted. [327]



[Title of District Court and Cause.]

CERTIFICATE OF REPORTER

I, John S. Beckwith, hereby certify that I reported in shorthand the testimony and proceedings had upon the trial of the above entitled cause, beginning on Wednesday, August 19, 1942, before Honorable Leon R. Yankwich, Judge Presiding; that thereafter I prepared a typewritten transcript from my shorthand notes so taken, and the foregoing transcript, pages numbered 1 to 330, both inclusive, contains a full, true and correct record of all the testimony adduced in behalf of the respective parties, motions and objections made and rulings of the Court thereon, and all other oral proceedings had upon the trial of said cause, so taken by me in shorthand, and of the whole thereof.

Dated at Portland, Oregon, this 12th day of November, 1942.

JOHN S. BECKWITH

Court Reporter.

[Endorsed]: Filed Dec. 8, 1942. [331]

[Endorsed]: No. 10334. United States Circuit Court of Appeals for the Ninth Circuit. Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Company, Appellants, vs. California Corrugated Culvert Company, a corporation, and Leo T. Crowley, Alien Property Custodian of the United States, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed December 24, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10334.

SAM SCHNITZER, HARRY J. WOLF, ROSE  
SCHNITZER and JENNIE WOLF, individu-  
ally, and as a co-partnership doing business  
under the name and style of ALASKA JUNK  
CO.,

Appellants,

vs.

CALIFORNIA CORRUGATED CULVERT CO.,  
a corporation, and LEO T. CROWLEY, Alien  
Property Custodian of the United States,  
Appellee.

APPELLANTS STATEMENT OF POINTS  
ON APPEAL

Come now the Appellants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co., and make and file this their statement of the points upon which they intend to rely upon the appeal of this cause from the interlocutory decree, entered herein in the trial court on September 9, 1942, as follows:

I.

The District Court erred in declining to consider proof and offered proof of anticipation of the patent in suit through prior development of analo-

gous arts, including specifically the art of coupling hoses.

## II.

The District Court erred in holding the patent in suit, and particularly Claim 3 thereof, valid when:

1. The so-called inventions and improvements, which are the subject matter of the patent in suit, do not involve or contain any patentable novelty, invention or discovery, and are not the statutory subject matter of invention, but on the contrary are mere aggregation, and are not useful.

2. The patent in suit, and particularly Claim 3 thereof, was void because of anticipation, and because it required no invention whatsoever, but only the ordinary skill of the art to which the alleged invention of the patent in suit appertains to make the same.

## III.

The District Court erred in finding and decreeing that the Appellants have infringed Claim 3 of the patent in suit when:

1. By reason of the proceedings had and taken by the patentee in the patent office in the prosecution of the application for the letters patent in suit, the patentee limits himself and the claims of the patent to the use of a flange or hat packing, and in that, during the course of such prosecution of the application in the patent office, the patentee differentiated between such flange or hat packing and the "U" packing disclosed in United States letters patent to E. V. Anderson, patent numbered



811,812, issued February 6, 1906, in order to escape rejection of his claims in the patent office and to secure issue of the patent in suit, making the point in such differentiation that his invention employs a hat or flange packing, as distinguished from a "U" packing.

2. By reason of the construction placed by the Appellee, California Corrugated Culvert Co., a corporation, upon the scope and extent of the claims of the patent in suit, and particularly Claim 3 thereof, which construction was communicated to and acted upon by the Appellants in this suit, the Appellees are estopped to assert the claims of the patent in suit, and particularly Claim 3 thereof, in scope wide enough to hold the Defendants and Appellants guilty of infringement.

3. The accused structure of the Appellants employs and discloses a "U" or "V" packing, as distinguished from the flange or hat packing taught by the claims of the patent in suit, the structure and the modes of operation of the two types of packing being different.

4. It ignored claim language in finding infringement.

Respectfully submitted,

J. S. MIDDLETON

Attorney for Appellants

State of Oregon

County of Multnomah—ss.

Service of the foregoing Appellants Statement

of Points on Appeal is acknowledged at Portland, Oregon, this 28th day of December, 1942.

L. R. GEISLER

Of Attorney for Appellee  
California Corrugated Cul-  
vert Co., a corporation.

JAMES H. HAZLETT

Of Attorneys for Leo T.  
Crowley, Alien Property  
Custodian of the United  
States.

[Endorsed]: Filed Dec. 31, 1942. Paul P.  
O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

### STIPULATION

Pursuant to the provisions of Section 6 of Rule 19 of the Rules of the above entitled Court, it is at this time:

Stipulated and Agreed by and between Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individually, and as a co-partnership doing business under the name and style of Alaska Junk Co., by J. S. Middleton, their attorney of record, and the Appellee, California Corrugated Culvert Co., a corporation, by Wm. S. Graham, its attorney of record, and the Appellee, Leo T. Crowley, Alien Property Custodian of the United States, by James H. Hazlett, of his attorneys of record, that the foregoing and attached Appellants'

Amended Designation of Parts of the Record to Be Printed is designated by all of the parties to this stipulation as the agreed and final designation of parts of the record to be printed upon appeal herein; and the Clerk of the above entitled Court is authorized and requested by the stipulating parties to cause the record on appeal to be printed in accordance with the terms of the said attached and preceding Appellants' Amended Designation of Parts of the Record to Be Printed.

Dated this 9th day of April, 1943.

J. S. MIDDLETON

Attorney for Appellants

WM. S. GRAHAM

Of Attorneys for Appellee,  
California Corrugated Cul-  
vert Co.

JAMES H. HAZLETT

Of Attorneys for Appellee,  
Leo T. Crowley, Alien  
Property Custodian of the  
United States

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[Title of Circuit Court of Appeals and Cause.]

APPELLANTS' AMENDED DESIGNATION  
OF PARTS OF THE RECORD TO BE  
PRINTED

Come now the Appellants, Sam Schnitzer, Harry J. Wolf, Rose Schnitzer and Jennie Wolf, individ-

ually, and as a co-partnership doing business under the name and style of Alaska Junk Co., and make and file this their amended designation of the parts of the record which they think necessary for the consideration of the Court upon appeal of this cause as the parts of the record to be printed by the Clerk under the provisions of Section 6 of Rule 19 of the Rules of this Court:

1. Complaint (excluding Exhibit "A"), and at end of complaint insert: "For Exhibit "A" to complaint, see Trial Exhibit 11."

2. Answer.

3. Stipulation to permit Defendants to incorporate additional patents in their answer.

4. Order based on above stipulation.

5. Motion and notice of motion to add party plaintiff.

6. Supplement to complaint.

7. Order substituting Leo T. Crowley, Alien Property Custodian, as party plaintiff.

8. Stipulation relative to pretrial exhibits.

9. Order upon pretrial.

10. Opinion of the Court.

11. Exceptions by Defendants to proposed findings.

12. Findings of fact and conclusions of law.

13. Interlocutory decree.

14. Notice of appeal.

15. Bond on appeal.

16. Order extending time to file record on appeal.



17. Appellants' statement of points on appeal (filed in the District Court).

18. Appellants' designation of contents of record on appeal (filed in the District Court).

19. Order directing transmittal of original exhibits.

20. Certificate of the District Court Clerk to transcript.

21. Stipulation and order in the Circuit Court of Appeals regarding reproduction of exhibits.

22. Appellants' statement of points on appeal (filed in the Circuit Court of Appeals); eliminating, however, the designation of parts of the record to be printed, appearing as pages 3 and 4 of the same filing, excepting the signature of counsel on page 4, which should be shown; and eliminating also all of the title of said paper, excepting "Appellants' statement of points on appeal", which should be shown.

23. Appellants' amended designation of parts of the record to be printed (filed in the Circuit Court of Appeals), being this document, except Exhibit "A" hereto, which is to be duplicated in the printed testimony, as hereinafter provided.

24. The entire transcript of testimony, except for the following deletions and substitutions, to-wit:

a. Delete (inclusively) all material whatever appearing on pages 1 to 23, inclusive, and the first 20 lines on page 24, and substitute therefor the statement hereto attached as Exhibit "A".

b. Delete lines 16 and 17 on page 25.

c. Delete lines 10 and 11 on page 26.

d. Delete on page 31 from the sentence beginning, "I hope," on line 16 to the bottom of the page.

e. Delete on page 32 all material to and including the word "experiences," on line 8; the sentence beginning with, "If you want," on line 14 and ending with the word "testimony," on line 18; and all matter following to the end of the page from the beginning of line 21.

f. Delete all matter from the beginning of page 33 to and including the sentence ending with the word "present" on line 4; also all matter to the end of the page, beginning with the words, "To illustrate," on line 20.

g. Delete all matter on page 34.

h. Delete all of page 35 from the beginning of the page to and including the word "there" at the end of line 10; also all of lines 23, 24 and 25.

i. Delete all matter on lines 1 to 6, inclusive, on page 36.

j. Delete all of lines 12 to 18, inclusive, and lines 22 and 23 on page 46.

k. Delete all matter on page 135 from the beginning of line 5 to and including the word "instrument" on line 19.

i. Delete all matter on page 139 from the sentence beginning, "Why was," on line 7 to and including the end of the page.

m. Delete all matter on page 140.

n. Delete all matter on page 141, excepting the following:

“Mr. Middleton: I think in the light of the Court’s ruling I had best wait until morning before proceeding with that.

“The Court: I think that is all right.”

o. Delete all matter on page 142 from the beginning of the page to and including the word “names” at the end of line 16.

p. Delete all matter on page 153, beginning with the sentence commencing, “I referred,” on line 16 and to and including the end of the page.

q. Delete all matter on pages 154, 155 and 156.

r. Delete all matter on page 157 from the beginning of the page to and including the word “were” at the end of line 22.

s. Delete that portion of page 180 beginning with the sentence commencing, “I have read,” on line 8 and ending with the word “forty” on line 14.

t. Delete the matter beginning with the sentence commencing, “Why, I had,” on line 23 on page 181, and ending with the words “the principles” on line 1 on page 182.

u. Delete all matter on page 182, beginning with the words, “I forget,” at the end of line 1, and ending with the word “echo” on line 13.

v. Delete lines 7 to 11, inclusive, on page 183.

w. Delete the last line on page 187, all of page 188, and all matter on page 189 from the beginning of the page to and including the words “like that” on line 12.

x. Delete all matter on pages 278 and 279.

y. Delete lines 1 to 3, inclusive, and lines 11 to 22, inclusive, on page 280.

z. Delete all matter beginning at the beginning of line 16 on page 327, and ending at the end of page 330; and, in lieu of this deletion, substitute the following:

“The Court thereupon fixed time for oral argument, and stated that briefs would not be received, but that points of law could be argued and supported by citation of authority.

“Hearing of testimony was concluded on August 22, 1942, followed by oral argument on August 24 and 25, whereupon the cause was submitted.”

23. The following exhibits:

11, 22, 25, 27, 36, 39 and 40 shall be printed through the medium of incorporating in the printed record printed copies of such exhibits heretofore furnished to the Clerk; and

29, 32 and 37 shall be printed through the medium of incorporation in the printed record of photostatic copies of such exhibits.

The foregoing amended designation of parts of the record to be printed is made pursuant to the stipulation of the parties hereto attached and made a part hereof, and pursuant also to the order of this Court heretofore entered in the premises and directing the mode of printing exhibits, to which order reference is hereby made.

Respectfully submitted,

J. S. MIDDLETON,

Attorney for Appellants

[Endorsed]: Filed Apr. 26, 1943. Paul P. O'Brien,  
Clerk.



